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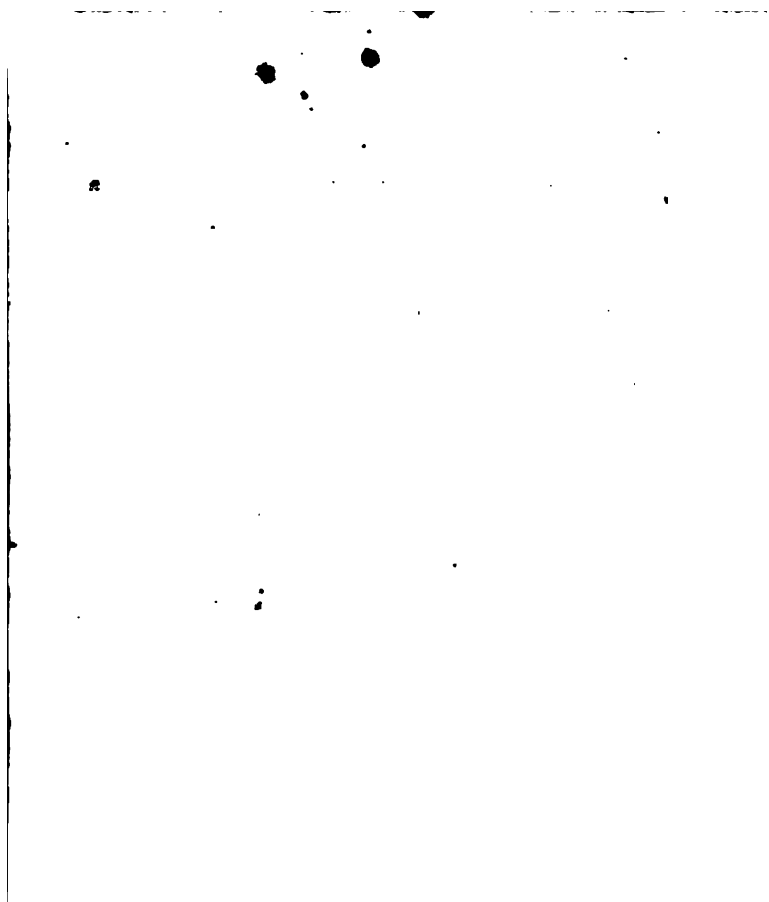


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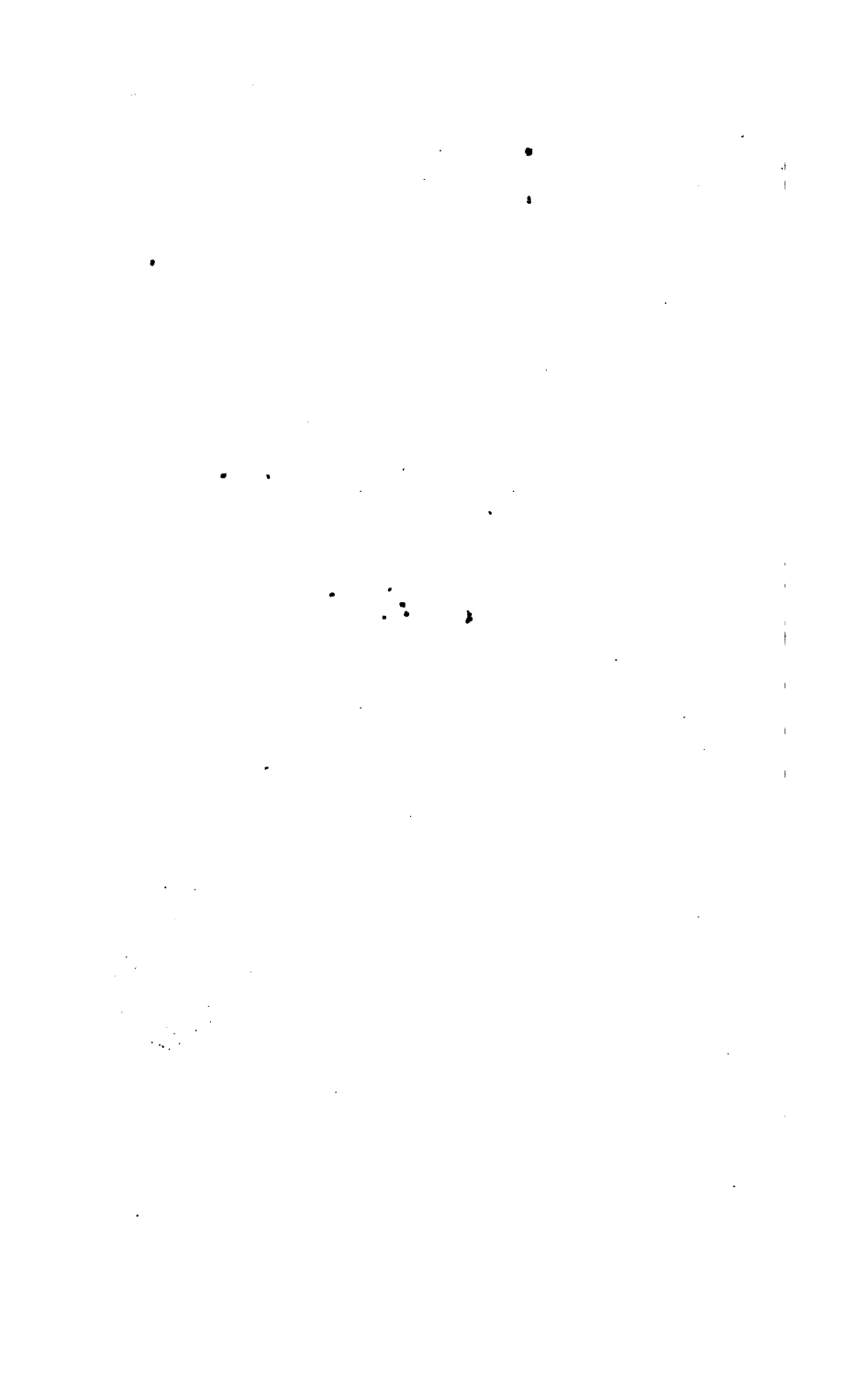
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THE
ORDERS
OF THE
HIGH COURT OF CHANCERY,

FROM
HILARY V. 1828 to MICH. T. 1842,

WITH
THE STATUTES
RELATING TO
PLEADING AND PRACTICE IN THAT COURT,

INCLUDING
THE ACTS FOR TAKING BILLS PRO CONFESSO, AND EFFECTUATING THE
SERVICE OF PROCESS ON PERSONS OUT OF THE JURISDICTION;
FOR AMENDING THE LAWS RESPECTING CONVEYANCES BY
INFANT TRUSTEES, LUNATICS, &c. ; AND FOR
ABOLISHING THE EQUITY JURISDICTION
OF THE COURT OF EXCHEQUER.

WITH
NOTES OF THE DECISIONS
UPON THE ABOVE ORDERS AND STATUTES,

AND
Explanatory Observations.

—
BY SAMUEL MILLER, ESQ.

BARRISTER AT LAW.



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PREFACE.

THE principal object of the Editor in the compilation of this Work has been to concentrate, under distinct heads, all the new Orders of the Court of Chancery, so as to present them to the student and practitioner in a condensed and classified form, together with the various decisions that have taken place upon such of them as have come under the consideration of the Court since they were issued.

To accomplish his purpose, the Editor has adopted an alphabetical arrangement of the various proceedings to which the new Orders relate, and under each head has stated the substance and effect of all the Orders affecting the particular proceeding referred to in it. Thus, under the head of Bill will be found, first, all the new Orders relating to amendment of bills; then all such as relate to the dismissal of bills; thirdly,

those relating to the interrogatories now to be inserted in bills; and lastly, those relating to the marking of bills; and in the notes the cases that have been decided upon such of those Orders as have received a judicial interpretation.

The Editor has been studiously careful to render this part of his Work as clear and intelligible, and at the same time as accurate as possible; and he believes that all the Orders are correctly analyzed; but in order that the reader may, if necessary, test the accuracy of his analysis, should any particular Order come into question, he has invariably added the number and description of each Order, so that an easy reference may be made to the Order itself in the APPENDIX.

The Editor was at first desirous of arranging the Orders chronologically as well as alphabetically in the Analysis, but he soon found this to be impracticable; and as the chronological order is preserved in the APPENDIX, there will be little difficulty in referring to them in that form should it be deemed desirable so to do.

Since the Orders of 1828 have come into operation, several Acts of Parliament have been passed,

which have materially altered the practice and proceedings of Courts of Equity; and the Editor, conceiving it would add to the utility of his Work, has given an abstract of them, together with the decisions that have taken place upon them in Courts of Equity; and such of the sections as are likely to be adverted to in general practice being set forth almost *verbatim*, a reference to the Acts themselves will, it is hoped, rarely be found necessary.

In arranging these, the Editor conceived it would be more convenient if the Acts 11 Geo. 4 & 1 Will. 4, c. 36, and 2 Will. 4, c. 58, relating to taking Bills *pro confesso*, immediately followed the analysis of the Orders, several of their enactments and the rules contained in them being intimately connected with some of the New Orders; and those Acts, therefore, together with the Acts for effectuating service of process on persons out of the jurisdiction, &c., form the Second Chapter. Then follow the Acts for regulating the proceedings and practice of the Court of Chancery, passed in the late and present reigns, and the recent Act for abolishing the equity jurisdiction of the Court

of Exchequer; and in the last Chapter are the remainder of the Acts (the 11 Geo. 4 & 1 Will. 4, c. 36, above referred to, being one) usually denominated "Sugden's Acts."

Should the Editor have happily so condensed his materials as to save even a small portion of that valuable time which must daily be consumed in considering the various matters comprised in the following pages, his labours will be amply required.

4, NEW SQUARE, LINCOLN'S INN,
November, 1841.

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CHAPTER I.



Analysis of the Orders in Chancery of the 3d April, 1828; 23d November, 1831; 21st December, 1833; 5th May, 1837; 9th and 10th May, 1839; 3d April, 1841; 26th August, 1841, and 11th, 17th and 19th November, 1841, as to

ACCOUNTS.

All parties accounting before the Masters to bring in their accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in, to be at liberty to examine the accounting party upon interrogatories, as the Master shall direct (a).—
[1828, Order 61.]

All such accounts, when passed and settled by the Master, to be entered in a book to be kept for that purpose in the Master's office, as is the practice with respect to receivers'

(a) Although this Order is imperative, yet a party, having acquiesced in the account being brought in according to the old form, cannot afterwards be permitted to turn round and insist that all the proceedings before the Master shall be set aside.—*Weale v. Rice*, M. R. Nov. 1834, Cooper, P. C. 438.

ACCOUNTS—continued.

accounts, and with proper indexes, in order to be referred to as occasion may require (*a*).—[1828, Order 62.]

As to preliminary accounts to be taken before the Master, see tit. "PRELIMINARY ACCOUNTS."

AFFIDAVITS.

At the time appointed for considering the decree, the Master to state whether the matters requiring evidence shall be proved by affidavits, or by examination of witnesses (*b*).—[1828, Order 51.] All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter, may be used before the Master [Ibid. Order 65]; but

(*a*) If copied into schedules annexed to the Master's report, such schedules are only to be charged at the rate of 6d. per folio.—*Attorney-General v. Lubbock*, 1 Myl. & K. 264.

(*b*) If the Master does not decide at the time appointed for considering the decree to admit affidavits as evidence, he cannot afterwards receive them unless by consent.—*Gibbs v. Payne*, 4 Sim. 554.

Where witnesses have been examined *vivâ voce* in the Master's office, their affidavits cannot afterwards be read.—*Hopkinson v. Roe*, 1 Beav. 182.

An affidavit made in support of a state of facts may be referred for scandal, but not for impertinence, by a party who has filed in support of a counter state of facts an affidavit which appears to be an answer to the former.—*In the matter of Burton*, 1 Russ. 380.

Affidavits in the Master's office ought to be regularly filed like other affidavits.—*Stubbs v. Sargon*, 2 Beav. 496.

AFFIDAVITS—continued.

no affidavit in reply to be read upon any inquiry before the Master, except as to new matter, which may be stated in the affidavits in answer; nor any further affidavits unless specially required by the Master.—[1828, Order 66.]

ANNUITIES.

In all orders directing the payment of annuities, the time when the first of such payments, and when all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise, shall be made, to be specified and expressed in words at length.—[1833, Order 28.]

ANSWER.

Defendant not to be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto, nor any interrogatories *except those which he is required to answer (a)*; and where he shall answer any statement or charge to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer to be deemed impertinent.—[1841, Aug. 26th, Order 16.]

(a) This will materially shorten answers in most cases.—Ed.

ANSWER—continued.

Defendant may by answer decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer, and this notwithstanding he answer other parts of the bill from which he might have protected himself by demurrer.—[1841, August, Order 38.]

Dedimus for.

Defendant may, *without order*, sue out a *dedimus* to take his plea, answer, or demurrer (a) (not demurring alone) in the country, on giving two days' notice in writing to plaintiff's clerk in court to give commissioners' names, and in default thereof defendant may sue out the same, directed to his own commissioners; and in case of illness or infirmity, whereby a defendant resident not less than four miles from Lincoln's Inn Hall shall be rendered unable to travel or leave home, he shall, upon filing an affidavit thereof, after such notice as above, be entitled to such *dedimus*.—[1833, Dec. Order 9.]

Exceptions to.

In all cases, whether answer filed in term

(a) If the defendant demur to part of the bill, and answer the remainder, he must sue out a special *dedimus*.—*Tomlinson v. Swinerton*, 1 K. 9.

But this will in many cases be rendered unnecessary by the 38th Order of Aug. 1841.—ED.

ANSWER, *Exceptions to*—continued.

time, or vacation, plaintiff to be allowed two months to except; but if exceptions not delivered within the two months, the answer to be deemed sufficient, and plaintiff to have no Order to deliver exceptions *nunc pro tunc* (a).—[1828, Order 4.]

The time between the last seal after Trinity Term, and the first seal before Michaelmas Term, and between the last seal after Michaelmas Term, and the first seal before Hilary Term, not to be reckoned (b).—[1831, Order 19.]

When exceptions for insufficiency are not submitted to, plaintiff may, at the expiration of eight days after the exceptions are delivered, but not before, *unless in injunction causes*, refer such answer for insufficiency; and if he do not refer the same within the next six days the answer to be deemed sufficient (c).—[1828, Order 5.]

(a) This Order has been held to apply to exceptions for insufficiency only.—*Bradbury v. Booker*, 4 Sim. 325.

The time for filing exceptions under this Order begins to run from the time of filing the answer, and not from that of payment of costs of the contempt, where an attachment has issued for want of answer.—*Nicklin v. Patten*, Rolls, May 8th, 1841; 5 Jur. p. 547.

(b) This Order applies equally to the time allowed for filing, delivering and referring exceptions, and obtaining the Master's report; see p. 10, *post*.

(c) An Order for referring an answer for insufficiency must be

ANSWER, *Exceptions to*—continued.

If the plaintiff do not within three weeks after second or third answer filed, refer it for insufficiency on the old exceptions, such answer to be deemed sufficient (a).—[1831; Order 6.] And if so referred, the particular exception or exceptions to which he requires a further answer to be stated in the Order.—[1828, Order 7.]

If upon a reference of exceptions the Master find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his

served as well as obtained before the expiration of the six days allowed by this Order; *Peace v. Hodgson*, 7 Sim. 347; *Taylor v. Harrison*, 8 Sim. 21, and 1 Myl. & Cr. 274. And plaintiff is not relieved from the necessity of serving such Order by immediately carrying it into the Master's office, and applying for a warrant to proceed upon it, if no notice is given to the defendant.—*Attorney-General v. Clack*, 1 Myl. & Cr. 367.

Should either of the periods mentioned in the 19th Order of 1831 intervene before the expiration of the eight days, it must not be reckoned in the computation of such eight days.—*Perry v. Walker, Cooper*, P. Ct 430.

(a) If the time for referring a further answer for insufficiency upon the old exceptions under this Order has expired, it cannot afterwards be revived by referring the answer for impertinence.—*Jeffray v. M'Cabe*, 1 Russ. & Myl. 739. But in *Bradbury v. Booker*, 4 Sim. 325, the Vice Chancellor decided otherwise.

Exceptions to an answer for insufficiency will not fail on account of their not following literally the words of the interrogatory, provided the variation be not important.—*Brown v. Keating*, 2 Beav. 581.

ANSWER, *Exceptions to*—continued.

report, and plaintiff need not serve a subpcena for the defendant to make a better answer. If further answer not put in within the time allowed the defendant to be in contempt(a).—[1828, Order 8.]

Where, however, a defendant who is not in contempt, or has not entered his appearance with the registrar, in manner mentioned in the 21st Order of 1833 (p. 15, *post*), submits to answer exceptions taken to a first answer, *before any Order to refer the same has been obtained*, he to be allowed, as of course, and without Order, four weeks to put in a further answer thereto; but if such Order be served prior to such submission, then the Master to fix the time to be allowed for putting in such further answer.—[1833, December, Order 18; 1841, August, Order 20.]

The Master in his report on such exceptions may certify by whom and in what proportions (if any) the costs of such exceptions and the reference thereon ought to be borne (b).—[*Ibid.* Order 19.]

(a) If the defendant require further time than has been allowed by the Master, he must apply to the Court before the time fixed by the Master has expired, otherwise no Order will be made.—*Wheat v. Graham*, 5 Sim. 570.

(b) After a third answer has been reported insufficient, if the Master has not under this Order certified by whom and in what pro-

ANSWER, *Exceptions to*—continued.

If upon such reference the answer be certified sufficient, it shall be deemed to be so from the date of the report; and if the defendant submit to answer without a report, the answer to be deemed insufficient from the date of the submission.—[1828, Order 9.]

Upon a *third* answer being reported insufficient, the defendant to be examined upon interrogatories to the points reported insufficient, and stand committed until he shall have perfectly answered such interrogatories; and pay in addition to the 4*l.* costs such further costs as the Court may award (*a*).—[Ibid. Order 10.]

Exceptions for *scandal*, or *impertinence*, to

portions the costs ought to be borne, plaintiff may, under the 10th Order of 1828, move that defendant be ordered to pay the costs occasioned by the insufficiency of the answers.—*Poole v. Gordon*, Law Journ. Rep. in Chanc. (N. S.) v. 8, p. 264.

(*a*) The Master being about to report a defendant's third answer insufficient, he put in a fourth answer, and then moved to stay the report. The motion was refused with costs, the Vice Chancellor observing that he was not at liberty to deprive the plaintiff of the benefit of this Order.—*Russell v. Dight*, 6 Sim. 430.

As to the course of proceeding for examining defendant on interrogatories under this Order, see *Farquharson v. Balfour*, 1 Turn. & Russ. 184.

A defendant may put in a further answer pending exceptions to his first answer, although he thereby deprives the plaintiff of the benefit of obtaining the common injunction on the Master's reporting the first answer to be insufficient.—*Ingham v. Ingham*, 9 Sim. 363.

ANSWER, *Exceptions to*—continued.

be in writing, and signed by counsel, describing the particular passages considered scandalous or impertinent, and the Order for referring them to be obtained within six days after the delivery of such exceptions [1828, Order 11.] (a); and to contain a direction to the Master to expunge any such scandalous or impertinent matter as he shall certify to be contained therein, *and which shall have been the subject of the reference.* The Master also to be at liberty, without further Order, to tax the costs of such reference, and consequent thereon and direct by whom the same shall be paid, and the same to be recoverable by subpcena; but such scandalous or impertinent matter not to be expunged, nor costs taxed until after four days from the filing of the report of such scandal and impertinence, in order that the adverse party may have an op-

(a) Relevant matter set out in an answer with unnecessary diffuseness is impertinent.

Where in the schedule to an answer such impertinent matter was so mixed up with pertinent matter, that the one could not be separated from the other: Held, that a general exception for matter "impertinently set forth" was rightly taken; and that the whole schedule must be treated as impertinent: Held also, that this Order has not altered the practice of the Court in this respect.—*Byde v. Masterman*, L. C. May 1, 1841; 5 Jur. 643.

Each exception must be supported *in toto*, or must fail altogether.—*Wagstaff v. Bryan*, 1 Russ. & M. 28.

ANSWER, *Exceptions to*—continued.

portunity of filing exceptions to such report.—
[1833, December, Order 22.]

Every Order for referring an answer for insufficiency, scandal, or impertinence, to be considered as abandoned, unless the party obtaining it procure the Master's report within a fortnight from the date of such Order, or unless the Master within the fortnight certify that a further time, to be stated in his certificate, is necessary in order to enable him to make a satisfactory report; in which case the order to be considered as abandoned if the report be not obtained within the further time so stated; and where such Order relates to alleged insufficiency, the answer to be deemed sufficient from the time when the Order is to be considered as abandoned(a).—
[1828, Order 12.]

(a) The time which occurs between the last seal after Trinity Term, and the first seal before Michaelmas Term, and between the last seal after Michaelmas Term, and the first seal before Hilary Term, not to be reckoned.—See Order 19, 1831. And if there be no seal between the last seal after Trinity Term and the first day of Michaelmas Term, the computation of the fortnight is not to begin until the first day of that term, although the Vice Chancellor may have made the Order of reference during the interval.

When the fortnight expires on a Sunday, the time is extended throughout the Monday following.—*Angell v. Westcombe*, 1 Myl. & Cr. 48.

Under this Order the Master may, of his own authority, and whether he is attended by any one on behalf of the parties or not, en-

ANSWER—continued.

Time for answering.

Defendant after appearance and without order allowed *eight weeks* to plead, answer, or demur (not demurring alone) to any original, or supplemental bill, or bill of revivor, and *five weeks* to plead, answer, or demur (not demurring alone) to any *amended bill to which the plaintiff shall require an answer*; but *twelve days* only to demur alone (a).—[1833, Dec. Order 10; 1841, Aug. Order 20.] And in every cause for an injunction to stay pro-

large the time for making his report, *Woods v. Woods*, 9 Sim. 213; and he may do so more than once if necessary.—*Davis v. Franklyn*, 2 Beav. 369. Nor is it necessary for any such certificate, except the first, to be made within fourteen days from the date of the order.—*Becke v. Whitworth*, Law J. Rep. (N. S.) Chanc. v. 1, p. 7.

The time for procuring the report will also be extended by the Court under special circumstances, *e. g.* where delay has been occasioned by the offices being closed for the recess.—*Burrell v. Nicholson*, 6 Sim. 212.

Acquiescence on the part of the defendant will prevent him from taking advantage of irregularity.—*Davis v. Franklyn*, *supra*.

(a) Previous to the Order of August, 1841, defendants were allowed ten weeks in a country cause to plead, answer, or demur to an original or supplemental bill, or bill of revivor, and seven weeks to plead, answer, or demur to an amended bill; but that Order declares that no more time shall be allowed in country than in town causes.

By the 3d and 4th Will. 4, c. 94, s. 13, all applications for time to answer are to be made to the Master; but in *Waterton v. Croft*, 6 Sim. 431, it was held that the Court still has jurisdiction to make an Order for time to answer on the overruling of a demurrer.

ANSWER, *Time for*—continued.

ceedings at law, the plaintiff to be entitled as of course upon motion to such injunction, and in every bill of revivor to the common Order to revive, unless the defendant plead, answer, or demur within *eight days* after appearance (a); the common Order to revive, reciting as the ground for granting the same, that the time limited by the Court to show cause against reviving the suit has expired [1833, Order 10]; and an Order for a common injunction reciting, that the defendant has omitted to put in his answer, plea, or demurrer, within the time limited by the Court.—[Ibid. Order 11.]

After the expiration of the time allowed to plead, answer, or demur (not demurring alone) to an original bill, if defendant shall have filed no plea, answer, or demurrer, plaintiff may file a note at the Six Clerks' Office to the effect stated in Order (see "ORDER,") a copy of which shall be served on defendant in the same manner as a subpoena to rejoin;

(a) In *Lee v. Ravenscroft*, 6 Sim. 474, the Vice Chancellor held that this Order applied only to injunctions to be obtained on original bills, and that a plaintiff, before he could obtain an injunction on an amended bill; must wait till the five weeks allowed for putting in the answer had expired; but in a recent case before Lord Cottenham (*Brooks v. Cooper*, August 11th, 1841,) his Lordship determined that it applies both to original and amended bills.

ANSWER, *Time for*—continued.

and such note *to have the same effect as if defendant had filed an answer traversing the whole bill*, and plaintiff had filed replication and served subpoena to rejoin, and after the filing and service of such note, defendant not to be at liberty to plead, answer, or demur, without special leave of the Court.—[1841, August 26th, Order 21.] But plaintiff not to be at liberty to file such note till he has obtained an Order for the purpose, on motion *without notice*, which shall not be made unless the Court be satisfied that defendant has been served with subpoena to appear and answer, and that the time allowed to plead, answer, or demur has expired.—[Ibid. Order 22.]

Where a demurrer or plea *to the whole bill* shall be overruled, plaintiff, if he do not require an answer, may immediately file the above note, and with the same effect, unless the Court on overruling such demurrer or plea, give time to plead, answer, or demur, and in such case if defendant shall file no plea, &c. within the time allowed, plaintiff, if he do not receive an answer, may on the expiration of such time file such note.—[Ibid. Order 33.]

Where defendant is in contempt to an attachment for want of appearance, the interval between the day fixed by the *subpoena* for

ANSWER, *Time for*—continued.

appearance, and that on which the appearance is entered, to be deducted from the time allowed as above to a defendant to plead, answer, &c. [1833, Order 12.] But not so the interval between the day on which an Order for the plaintiff to give security for costs is served, and the day on which such security is given (a).—[Ibid. Order 13.]

Where plaintiff obtains an Order to amend without requiring any further answer, and amends the bill any otherwise than by an alteration of names, dates, or sums, or the correction of clerical errors only, the defendant as of course to have *eight days* to consider whether he will answer the same, at the end of which time plaintiff to be at liberty to file replication, or set down cause for hearing on bill and answer, unless defendant shall have previously served an Order, or taken out and served a warrant for time to answer such amended bill; in which last case the Master may allow the defendant such time as he shall think fit.—[Ibid. Order 14.]

As to the time allowed where defendant

(a) The plaintiff must not only give the defendant's clerk in court the names of the proposed sureties in the bond, but wait two days to see if any objection be made to them.—*Taylor v. Bailey*, Cooper, P. C. 447.

ANSWER, *Time for*—continued.

submits to answer exceptions, see title "EXCEPTIONS," p. 7, ante.

All applications for time to plead, answer, or demur to be heard and determined by the Master, subject to appeal by motion to the Court, but the Order on such appeal to be final, and no such application to be heard by the Court except on appeal. (3 & 4 W. 4, c. 94, ss. 13 and 14.).—[1833, Order 20.]

In every order granted by a Master for further time to answer, it shall be made a condition of such Order that defendant shall enter his appearance with the registrar, and consent to a serjeant-at-arms, &c. unless under special circumstances *to be stated in the Order* the Master should otherwise direct (*a*).—[1833, Order 21.]

When defendant, in contempt for want of answer, obtains on filing his answer the com-

(a) This order does not alter the practice of the third application for time when the Master gives no special direction.—*Judd v. Wartenaby*, 2 M. & K. 813.

If after time for answering has expired, the Master thinks fit to grant further time without imposing on the defendant the condition mentioned in the above Order, he must not only state in his Order that there are circumstances which have induced him to dispense with that condition, but he must state the circumstances, though briefly, sufficiently full to convey an intelligible explanation of the ground of his indulgence.—*Anon.* V. C. Dec. 1836, Cooper, P. C. 458.

ANSWER, *Time for*—continued.

mon Order to be discharged as to his contempt, on payment or tender of the costs thereof, or plaintiff accepts the costs without Order, if answer insufficient, plaintiff need not recommence the process of contempt, but may take it up at the point to which he had before proceeded (a).—[1831, Order 24.]

On sheriff's return of *non est inventus* to an attachment for not answering, plaintiff to be entitled at once to writ of sequestration on producing the affidavit required by this Order. (See "ORDER.")—[1841, Aug. 26th, Order 9.]

APPEARANCE.

No order to be made for a messenger or for the serjeant-at-arms to take the body of a defendant for the purpose of compelling him to appear to a bill.—[1841, August, Order 7.]

If defendant, being duly served with subpoena to appear and answer, refuse or neglect to appear, plaintiff, after eight days from such service, may apply to the Court for leave to enter an appearance for defendant; and the Court, *being satisfied that the subpoena has*

(a) A defendant being in contempt for want of answer, filed his answer, and the plaintiff took an office copy of it: Held, that the plaintiff did not thereby wave the contempt, *Woodward v. Twinaine*, 9 Sim. 301; nor does he wave such contempt by obtaining an order to amend.—*Livingstone v. Cooke*, 9 Sim. 468.

APPEARANCE—continued.

been duly served, and that no appearance has been entered by defendant, may give such leave accordingly; and thereupon plaintiff may cause an appearance to be entered for defendant, and such further proceedings may be had in the cause as if defendant had actually appeared.—[1841, Order 8.]

Defendant may enter a special appearance where he is served with a copy of the bill under this Order, and thereupon he shall be entitled to be served with notice of all proceedings in the cause. — [Ibid. Order 27. *See also as to costs, same Order, tit. "BILL."*]

But such special appearance not to be entered after the time limited by the practice of the Court for appearing to a bill in the ordinary course, without an Order to be obtained on notice; and the party entering such special appearance to be bound by all proceedings in the cause prior thereto.—[Ibid. Order 28.]

ATTACHMENT.

No writ of attachment with proclamations, nor any writ of rebellion, to be hereafter issued for compelling obedience to any process, order, or decree of the Court.—[1841, August, Order 6.] Nor any writ of execution or attachment for compelling obedience to an

ATTACHMENT—continued.

Order or decree of the Court; but the party required by any such Order to do any act shall, upon being served with such Order, be held bound to do such act in obedience to the Order.—[1841, Order 10.]

Upon the sheriff's return of *non est inventus* to an attachment for not answering, and upon affidavit that due diligence was used to ascertain where defendant was at the issuing of the writ, and in endeavouring to apprehend him under the same, and that the person suing forth the writ verily believed at the time of suing forth the same that defendant was in the county into which such writ was issued, plaintiff to be entitled to a writ of sequestration in the same manner that he is now entitled to such writ on the like return made by the serjeant-at-arms (a).—[Ibid. Order 9.]

BILL.*Amendment of.*

Plaintiff to be at liberty *after answer, before filing a replication*, to obtain upon motion, or petition, without notice, one Order for leave to amend (b); but no further leave

(a) This alters the practice for taking bills pro confesso under 11 Geo. 4 and 1 W. 4, c. 36, s. 15, rule 1. See chap. ii. *post*.

(b) Where exceptions to answer are allowed or submitted to, plaintiff may obtain an order of course that defendant may answer

BILL, *Amendment of*—continued.

to amend to be granted after answer, and before replication, unless the Court be satisfied by affidavit that the draft of the intended amendments has been settled, approved and signed by counsel, and that such amendments are not intended to be made for the purpose of delay, or vexation, but because the same are considered material to the case of the plaintiff; such affidavit to be made by the plaintiff, or one of the plaintiffs where there is more than one, *and* his, her, or their solicitor (*a*), or by such solicitor alone, in case the plaintiff or plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no such Order, to be made either *without* notice, or upon affidavit, unless such Order be obtained within *six weeks* after the answer, if

the amendments and exceptions at the same time.—*Mendizabel v. Hullett*, 1 Russ. & Myl. 324; *Bird v. Hustler*, *ibid.* 325.

In *Cullingworth v. Grundy*, 2 Myl. & K. 359, the Lord Chancellor held that the jurisdiction of the Court to make Orders of course was not taken away by the operation of the 3 & 4 Will. 4, c. 94, ss. 13 and 14, and the new Orders founded thereon. The question in that case was, whether the common application for leave to amend before answer ought to be made as a motion of course in Court, or whether it should be made before the Master, like special applications for leave to amend.

(*a*) An application to amend under this Order must be supported by the joint affidavit of the plaintiff *and* his solicitor.—*Browne v. Dunne*, 3 Sim. 23.

BILL, *Amendment of*—continued.

there be only one defendant, or after the last of the answers if there be two or more defendants, is to be deemed sufficient. But Orders for amending clerical errors, or errors in names, dates, or sums, may be obtained on motion, or petition without notice (a).—[1831, Order 13.]

(a) A defendant stated by the bill to be out of the jurisdiction, is not to be considered for the purposes of this Order as a defendant on the record; and an Order to amend obtained more than six weeks after the time within which the answers of all the defendants within the jurisdiction are to be deemed sufficient, will be irregular.—*King of Spain v. Hullett*, 1 Russ. & Myl. 7.

So also a defendant not served with subpoena is not a defendant within the meaning of this Order.—*Cooke v. Betham*, Cooper, P. C. 403.

After the six weeks limited by this Order have expired the Master has no jurisdiction to entertain applications for leave to amend; but the Court will under special circumstances grant such applications.—*Lloyd v. Wait*, 4 Myl. & Cr. 257; *Milbank v. Stevens*, 8 Sim. 160.

Where an Order to amend may be made by the Master as against some of the defendants, but must be made by the Court as against another of them, the plaintiff may obtain the Order from the Court as against all the defendants.—*Mutchitt v. Palmer*, 10 Sim. 241.

In *Evans v. Hughes*, 5 Sim. 666, plaintiff, after defendant had answered, amended by adding another defendant. After that other defendant had answered, plaintiff again moved *ex parte* to amend, not requiring any answer from original defendant and Order made, plaintiff undertaking not to serve the original defendant with a subpoena to answer the amendments.

So in *Cottingham v. Potts*, 1 Russ. & Myl. 81, a second Order for leave to amend was made *ex parte* where the answers to the

BILL, Amendment of—continued.

Every Order for leave to amend to contain an undertaking by the plaintiff *to amend within three weeks* from the date of the Order,

amended bill rendered it necessary to add various incumbrancers as parties.

Where exceptions are taken to an answer, and plaintiff requires to amend, he should move *specifically* for liberty to amend without prejudice to exceptions, for by motions of course to amend exceptions will be waived.—*De la Torre v. Bernales*, 4 Mad. 396.

This order does not apply to amendments *before answer*, which may be made by motion of course, or petition, as often as may be necessary; nor does it apply to amendments made upon exceptions to answer being submitted to, or allowed, *Bird v. Hustler*, 1 Russ. & Myl. 325; nor to merely formal amendments, an order for which may be obtained without notice.—*Smith v. Evans*, 1 Russ. & M. 80.

The amendments of a bill under leave given on allowance of a demurrer is not reckoned for the purposes of this Order.—*Pesheller v. Hammett*, 3 Sim. 389; *Waterton v. Croft*, 6 Sim. 485.

A plaintiff submitted to a demurrer, and obtained an order of course to amend, undertaking to amend within three weeks; he did not comply with the undertaking, but after the expiration of the three weeks obtained a second Order of course to amend upon similar terms. No answer having been filed, it was held that the second Order was not irregular.—*Nicholson v. Peile*, 2 Beav. 497. But the effect of allowing a demurrer, and giving the plaintiff by the same Order leave to amend is, that the suit remains a pending suit, and notwithstanding the plaintiff pays the costs of the demurrer, yet if he do not amend, the defendant may dismiss the bill with costs for want of prosecution.—*Seddon v. Evans*, Law J. Rep. (N. S.) Chanc. v. 10, p. 68.

An Order to amend obtained in violation of this Order may be treated as a nullity.—*De Geneve v. Hannam*, 1 Russ. & Myl. 494.

If a defendant is added by amendment after answer, no further amendment of the bill can be made even as against that defendant, except upon an application supported in the manner required by this

BILL, Amendment of—continued.

and in default thereof the Order to become void, and the cause, as far as relates to any motion to dismiss for want of prosecution, to stand in the same situation as if such Order had not been made.—[1828, Order 14.]

After replication, the plaintiff not to be permitted to withdraw it, and amend without a special Order of *the Master in rotation* (a),

Order.—*Attorney-General v. Nethercoat*, 2 Myl. & Cr. 604; *Haddelsey v. Nevile*, Ed. MS.; but see *Evans v. Hughes*, 5 Sim. 666; *Cottingham v. Potts*, 1 Russ. & M. 81.

Where a plaintiff, who had obtained an Order to amend without requiring a further answer amending the defendant's office copy, paid 20s. costs for the amendments without having *called on* the defendant for his office copy, and such costs were accepted by the *defendant's* clerk in court, it was held that the acceptance of the costs was a waiver of the plaintiff's omission to call for the office copy; and a motion on the part of the defendants for leave to answer notwithstanding replication was refused, but without costs.—*Boswell v. Tucker*, 2 Keen, 188; *Tarleton v. Dyer*, 1 R. & Myl. 1.

If plaintiff obtains an Order to amend without costs amending defendant's office copy, and the amendments are found to require a new engrossment, he may amend without Order paying 20s. costs.—*Cor v. Champneys*, 6 Mad. 314.

Where a plaintiff wishes to amend, but does not require a further answer, the Order ought to contain a recital to that effect, otherwise it is irregular.—*Boddington v. Woodley*, 9 Sim. 380.

After an injunction had been continued on merits, the plaintiff moved to amend without prejudice to the injunction: Held, that in such a case the amendment could not prejudice the injunction, and therefore the motion was a simple application to amend, and ought to have been made before the Master.—*Woodroffe v. Daniel*, 9 Sim. 410.

(a) The mode in which the Master in rotation is to be ascertained

BILL, Amendment of—continued.

who is to be satisfied by affidavit that the matter of the proposed amendment is material, *and could not with reasonable diligence have been sooner introduced into the bill*, the application for such purpose, *as well as all special applications to amend bill* (which by Order 20 of 1833 are to be heard and determined by such Master in rotation), being made by taking out a warrant, at the foot whereof a notice is to be written, specifying the object of the application, and to be served two clear days before the return thereof (a).—
[1828, Order 15. Stat. 3 & 4 Will. 4, c. 94, s. 13. 1833, Order 20.]

is explained by Orders 15 and 17 of December, 1833, p. 81, *post*; for which see also tit. "MASTER."

(a) This (15th) Order does not apply to an amendment by adding parties for which a motion *of course* may be made at any time, *Brattle v. Waterman*, 4 Sim. 125; *Cockburn v. Raphael*, Cooper, P. C. 407; nor to an Order at the hearing, giving the plaintiff leave to amend, nor to applications with respect to amendments made in pursuance of such an Order.—*Johnson v. Compton*, 4 Sim. 47; *Kerrick v. Saffery*, 7 Sim. 317; *Milligan v. Mitchell*, 1 Myl. & Cr. 433.

Nor does it preclude a plaintiff from filing a supplemental bill, where by inadvertence a necessary party has not been brought before the Court, and the suit has got to that stage that the plaintiff cannot amend.—*Semple v. Price*, 10 Sim. 238.

But where a plaintiff obtains leave to amend by adding parties, he will be held strictly to that particular amendment; and he will not be allowed to add parties as co-plaintiffs, and to introduce new

BILL, Amendment of—continued.

Plaintiff in injunction cause having obtained the common injunction to stay proceedings at law, may (either before or after

statements and charges in the bill relating to such co-plaintiffs.—*Milligan v. Mitchell*, *supra*; *Bailey v. Dennett*, 3 Y. & C. 461.

And where leave has been given to the plaintiff at the hearing to amend by adding certain parties, if, after having added those, he is desirous of adding others, he must apply for further leave so to do; and that application must be made to the Court and not to a Master.—*Bierdermann v. Seymour*, 2 M. & Cr. 117. But as to adding parties, see Orders 39 and 40 of August, 1841, and tit. "PARTIES," *post*.

So application for leave to amend by striking out the name of a plaintiff, must be made to the Court, the Master in such a case having no jurisdiction under the 3 & 4 Will. 4, c. 94.—*Read v. Treacher*, 2 Keen, 317.

And in *Rees v. Edwards*, 1 Keen, 465, where an application was made for leave to amend without prejudice to the injunction which had been continued on the merits, Lord Langdale made the Order, although it was objected that being a special application for leave to amend, the Court was precluded from hearing it by 3 & 4 Will. 4, c. 94, except by way of appeal; his Lordship observing, that the 14th section of that Act appeared to preclude the judges of the Court of Chancery from all original jurisdiction in cases of application for leave to amend, but that strict construction had not been put upon the act. It had been held that the act did not apply to Orders of course to amend the bill, nor to cases in which the Court being possessed of all the circumstances of the case, was enabled at the time to exercise a proper discretion on the subject of amendment; *sed vide contra Woodroffe v. Daniel*, 9 Sim. 410.

If after replication filed, the plaintiff has on special leave amended his bill in such a manner as to call for an answer, he may afterwards obtain, *as of course*, a further Order to amend at any time before the answer to the amended bill is put upon the file.—*Wharton v. Swann*, 2 Myl. & K. 362.

After a plea allowed and replied to, the plaintiff will not be al-

BILL, *Amendment of*—continued.

answer of defendant, and whether injunction shall or shall not have been continued to the hearing) obtain an order *of course* for leave to amend without prejudice to the injunction; but such Order to contain an undertaking by plaintiff to amend within a week, and in default thereof the Order to be void. And in case the bill be amended pursuant to such Order, defendant may thereupon, and although he may not have put in any answer, move, *on notice*, to dissolve the injunction, on the ground that the bill as amended does not, even if the amendments be true, entitle the plaintiff thereto.—[1839, May 9, Order 2.]

If injunction to stay proceedings be prayed for by the bill, and be not obtained, or having been obtained, be dissolved on merits stated in answer, and plaintiff afterwards amend, and defendant do not plead, answer, or demur, to the amended bill within eight days after appearance, plaintiff entitled to move for in-

lowed to withdraw the replication and amend the bill, with a view to vary the case originally made.—*Barnett v. Grafton*, 8 Sim. 72.

A plaintiff applying for leave to amend after replication, must give the Court as much information as to the nature of the proposed amendments as the Court requires, upon an application for leave to amend a second time after answer.—*Attorney-Gen. v. Fishmongers' Company*, 4 Myl. & Cr. 1.

As to what will be deemed *reasonable diligence*, see *Daniel v. Lord Falmouth*, Cooper, P. C. 407.

BILL, *Amendment of*—continued.

junction, *upon affidavit* of the truth of the amendments.—[1839, Order 3.]

Dismissal of.

Where the answer of a defendant is to be deemed sufficient, whether it be in term time or vacation, if the plaintiff do not proceed in the cause, the defendant may, after the expiration of *two months* (a), move, *upon notice*, that the bill be dismissed with costs for want of prosecution; and the bill to be accordingly dismissed with costs, unless the plaintiff appear upon such motion and give an undertaking to file replication and serve subpœna to rejoin; and in case he requires a commission to examine witnesses, do obtain and serve an Order for such commission, within three weeks from the date of such undertaking (b); or

(a) By the 4th and 16th Orders, four months must elapse after the filing of the answer before the bill can be dismissed for want of prosecution; but the intervals (of vacation) mentioned in the 19th Order of 1831, see *tit. "VACATION," post*, must be reckoned, unless they occur in the first two months.—*Attorney-Gen. v. Jones*, 5 Sim. 246; *Marriott v. Tapley*, 8 Sim. 38.

(b) If a plaintiff obtain an Order for a commission, but do not take it out, the defendant is entitled to a similar Order, on motion of course.—*Rattenbury v. Fenton*, 6 Sim. 368.

Where a plaintiff has failed to comply with an undertaking to speed given under this Order, the Court will not relieve him from the consequences, unless the failure was caused by some inevitable accident. But a defendant cannot give a notice to dismiss until the whole time allowed for performing an undertaking to speed has ex-

BILL, Dismissal of—continued.

unless the plaintiff, without filing replication, appear upon such motion, and give an undertaking to hear the cause as against the defendant making the motion upon bill and answer, or unless it appear that the plaintiff is unable to proceed in the cause by reason of any other defendant or defendants not having sufficiently

pired, although performance has become impossible.—*Whalley v. Pepper*, 3 Sim. 203.

The Order on an undertaking to speed is to the following effect : “That the plaintiff do file a replication, serve subpoenas to rejoin, and obtain and serve an order for a commission to examine witnesses, if he require such commission, within three weeks from the date of the Order ; and give rules to produce and to pass publication in the term next but one after the date of the order, or in default thereof that the bill be dismissed with costs.”

Where the Order containing an undertaking to speed was inaccurately drawn up, fixing the periods for giving rules to produce, serving subpoena to rejoin, and setting down the cause a term too soon, the Court refused to make an Order for dismissal even after the proper time had expired.—*Slatter v. Slatter*, Cooper, P. C. 418.

If plaintiff, on motion to dismiss for want of prosecution, undertake to speed, and in pursuance of the undertaking file replication and serve subpoena to rejoin, but do not move for a commission, defendant cannot afterwards move to dismiss for want of prosecution, as he may himself proceed with the cause.—*Carden v. Manning*, 1 Keen, 380. So also if plaintiff, not requiring a commission, give the rules to produce and pass publication, but do not serve the subpoena to hear judgment within the time limited by his undertaking to speed, defendant cannot move to dismiss, the case not being within the 16th or 17th of the new Orders.—*Crooke v. Trery*, 3 Myl. & Cr. 168.

And where the plaintiff had filed a replication but did not serve any subpoena to rejoin, and on a motion to dismiss for want of pro-

BILL, Dismissal of—continued.

answered the bill, and that due diligence has been used to obtain a sufficient answer or answers from such other defendant or defendants; in which case the Court to allow to the plaintiff such further time for proceeding in the cause as may appear reasonable (a).

If the plaintiff appear upon the motion to

secution his counsel stated that he did not require a commission, it was held that the case must be governed by the old practice.—*Smith v. Oliver*, 3 Myl. & Cr. 165; *Daniell v. Austen*, 8 Sim. 19. But see *Padmore v. Bodfield*, 1 Beav. 367, where the bill was dismissed after replication filed, in pursuance of undertaking to speed, but no further steps taken.

Where replication was filed on the same day on which a notice of motion to dismiss was given, but after the notice, the plaintiff, not having tendered the costs of preparing and serving the notice of motion, was ordered to pay the costs of the motion, *Attorney-Gen. v. Cooper*, 9 Sim. 379; and it seems the only Order to be made on a motion to dismiss, where plaintiff files a replication after being served with the notice of motion, is for the plaintiff to pay the costs of the application.—*The Corporation of Dartmouth v. Holdsworth*, 9 Sim. 383; *Evered v. Evered*, 4 Jur. 382.

After a decree or decretal Order, not directing enquiries merely, has been made, the bill cannot be dismissed.—*Bluck v. Colnaghi*, 9 Sim. 411.

If notice of motion to dismiss for want of prosecution is given for too early a day, the defect is not cured by the motion being accidentally postponed to a day when it might have been regularly made.—*De Geneve v. Hannam*, 1 Russ. & M. 494.

This Order does not apply to a commission to examine witnesses abroad.—*King of Spain v. Mendizabel*, 5 Sim. 596.

(a) A defendant may move to dismiss after the expiration of two months from the time when his answer was to be deemed sufficient,

BILL, Dismissal of—continued.

dismiss, and give the undertaking to file a replication and take such other proceedings as above, then all the rules and regulations with respect to the commission and the return thereof, and the setting down the cause for hearing, and the rights of the defendant with respect to the commission, in case of any default on the part of the plaintiff, expressed in the next Order to apply to all cases under this Order.—[1831, Order 16.]

Where the plaintiff files replication without having been served with notice to dismiss for want of prosecution, he shall serve subpoena to rejoin; and in case he requires a commission to examine witnesses, obtain and serve an Order for such commission within three weeks from the filing of the replication (a);

although owing to the answers of the other defendants not being filed, the time for amending the bill had not expired.

Threatening the defendants who have not answered with an attachment, without issuing one, is not using due diligence to get in their answers, so as to prevent another defendant from moving to dismiss.—*Gully v. Van Bodicoate and others*, 5 Sim. 668; *Cooke v. Beetham*, Law Journ. (N. S.) Rep. in Chan. v. 8, p. 270.

But the plaintiff may obtain an Order to amend (if he have not already had one pursuant to the 13th Order of 1831,) and service of that before the motion to dismiss is made will be an answer to the motion, although he must pay the costs of such motion.—*Peacock v. Sivier*, 5 Sim. 553; *Attorney-Gen. v. Kemp*, 8 Sim. 208.

(a) This Order applies only to cases in which the plaintiff requires a commission; so that in other cases the old practice remains unal-

BILL, Dismissal of—continued.

such commission to be returnable, at the latest, on the first return of the second term then next following (*a*); and shall give his rules to produce witnesses and pass publication at the latest in the same term, and set

tered.—*Williams v. Janaway*, 6 Sim. 77; *Ward v. Swift*; *Platel v. Morley*, Cooper P. C. 423, 424. See also *Crooke v. Trery*, *Smith v. Oliver*, *Daniel v. Austen*, and *Carden v. Maning*, pp. 27, 28, *ante*.

The old practice, as stated in *Anon.* 5 Sim. 497, is as follows: "If the plaintiff has served a subpoena to rejoin, the defendant must wait one clear term after that subpoena was served, when he must give rules to produce witnesses. He must then wait another clear term, when he must give rules to publish depositions, although not any witnesses have been examined. This is compulsory process. The defendant must then wait another clear term, when he may set the cause down to be heard at his request, and must serve the plaintiff with a subpoena to hear judgment."

Though plaintiff do not want a commission, he is not at liberty to give a rule to pass publication until the expiration of three weeks from service of subpoena to rejoin.—*Flight v. Jones*, 7 Sim. 256.

Where plaintiff obtains an Order for a commission, and serves it on defendant, his subsequent abandonment of that Order will not withdraw the case from the operation of this (17th) Order.—*Rayson v. Lees*, 1 Keen, 14.

In *Earl of Ferrers v. Shirley*, 7 Sim. 484, the defendant, *before replication*, served a notice of motion to dismiss. On the next day plaintiff replied, and the motion was not made, and consequently plaintiff did not undertake to speed. No subpoena to rejoin was served, and the defendant again moved to dismiss: Held, that neither the 16th nor the 17th Order applied, but that the case was governed by the old practice.

(*a*) The words "second term then next following," refer to the second term following the day on which the Order for the commission is served.—*Williams v. M'Donnel*, 9 Sim. 400.

BILL, Dismissal of—continued.

down his cause for hearing, and duly serve the subpoena to hear judgment returnable in the succeeding term; and if he make default therein, then upon application by the defendant, *upon notice*, the plaintiff's bill to be dismissed with costs, unless the Court make special Order to the contrary (a).—[1831, Order 17.]

Defendant not to be at liberty to serve a notice to dismiss for want of prosecution until

(a) The remainder of this Order being applicable to the Commission, see *tit. "COMMISSION,"* p. 43, *post*.

If a defendant who is in a situation to dismiss a bill by an Order of course for want of prosecution, after replication filed, does not avail himself of his right, but permits the plaintiff to file interrogatories and to examine witnesses, he cannot afterwards dismiss the bill for want of prosecution, and an Order for dismissal subsequently obtained, will be discharged for irregularity.—*Ferrers v. Hutchinson*, 1 Russ. & Myl. 22. So where an Order for a commission has been obtained after the expiration of the three weeks, the defendant cannot move to dismiss, his proper course being to move to discharge the order for the commission.—*Strickland v. Strickland*, 1 Craig & Phil. 151.

But where the defendant had neglected to take advantage of the default of the plaintiff until the plaintiff served a subpoena to rejoin, and sued out a commission, and the defendant moved to dismiss, on affidavit that the cause was not set down for hearing, and that no rules were taken out to produce witnesses or pass publication, the case was held to be within this Order, and the plaintiff was ordered to speed the cause, but the defendant was not allowed costs of the application.—*White v. Smith*, 1 Keen, 381.

Where the plaintiff's solicitor, merely through ignorance or mistake, has neglected to comply with the exigency of this Order, the

BILL, Dismissal of—continued.

after the time limited by the rules of the Court within which a plaintiff may obtain an Order to amend, as to such defendant, shall have expired (a).—[1833, Order 26.]

Court will not relieve the plaintiff, upon terms, from the penal consequences of the neglect without the consent of the other party.—*Walmsley v. Froude*, 1 Russ. & M. 334.

A party who consents to dispense with this Order in some particulars, is not to be considered as giving up the benefit of it altogether, but is entitled to enforce such of its requisitions as he has not dispensed with.—*Webber v. Bolitho*, 8 Sim. 240.

If a plaintiff have liberty to amend, and in default of amendment within a certain time the bill is to stand dismissed with costs, it is after that time a motion of course, not requiring notice, that the bill should be dismissed.—*Dobede v. Edwards*, Law Jour. Rep. (N. S.) Chanc. v. 10, p. 160.

Where on motion to dismiss for want of prosecution, the delay can be satisfactorily accounted for, the Court will not make any Order.—*Vent v. Pacey*, 3 Sim. 382. And if it can be shown that the defendant's solicitor was aware of the cause of delay, the motion will be dismissed with costs.—*Barber v. Kavanagh*, V. C. Reg. Lib. 1834, p. 704 ; *Cooper*, P. C. 418 ; *Partington v. Baillie*, 5 Sim. 667.

(a) In *Attorney-Gen. v. Kemp*, 8 Sim. 208, two of the defendants had answered the bill, but the other defendants had not. Above eight months after the answer of the two first defendants was filed, they served a notice of motion to dismiss, and on the next day the plaintiff obtained, as of course, and served an Order to amend : Held, that under the above Order, the Order to amend was regularly obtained, and the motion to dismiss was refused ; but the plaintiff was ordered to pay the costs of the motion, See also *Peacock v. Sievier*, 5 Sim. 553.

A plaintiff having obtained an Order of course to amend, after the time limited for that purpose had expired, and the defendant being in a condition to move to dismiss for want of prosecution : Held,

BILL—continued.

Interrogatories to.

Defendant not to be bound to answer any statement or charge in the bill unless specially and particularly interrogated thereto, nor any interrogatories except such as he is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated only by stating his ignorance of the matter so stated or charged, such answer to be deemed impertinent.—[1841, August 26, Order 16.]

The interrogatories, in interrogating part of bill, to be divided from each other and numbered consecutively 1, 2, 3, &c.; and those which each defendant is required to answer to be specified in a note at the foot of the bill, in the following form, viz.:—“The defendant (A.B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.” And the office copy of the bill taken by each defendant not to contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.—[Ibid. Order 17.]

that a single notice of motion to discharge the irregular Order and dismiss the bill, was not irregular on the ground of multifariousness.
Trails v. Bull, 1 Beav. 475.

BILL, *Interrogatories to*—continued.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, to be considered and treated as part of the bill, and the addition of any such note, or any alteration in, or addition to it, after the bill is filed, to be considered as an amendment of the bill.—[1841, Order 18.] Instead of the words preceding the interrogating part of the bill, beginning, “To the end therefore,” the words set forth in this Order to be used. See “ORDER.”—[Ibid. Order 19.]

Marking of.

Every bill or information to be marked either with the words “Lord Chancellor,” or with the words “Master of the Rolls,” to designate the judge before whom the same is intended to be heard. [See Order, May, 1837](a).

Of Revivor.

When any defendant has been taken into custody upon attachment, or other process, for want of appearance to a bill of revivor, and shall refuse or neglect to enter an appearance to such bill within *eight days* after the return of such attachment, the plaintiff to be entitled as of course, upon motion or petition,

(a) As to the mode of marking bills in causes to be heard before the Vice-Chancellors, see Orders of 11th November, 1841.—Appendix, p. 374, *post*.

BILL, *Of Revivor*—continued.

to the common order to revive; and if defendant cannot be found so as to be taken upon such attachment, and a return of *non est inventus* shall have been made thereon, plaintiff, upon producing such return and an affidavit that due diligence has been used in endeavouring to execute such attachment, and that there was good reason to believe defendant was in the county to which such attachment issued at the time of suing out the same, plaintiff to be also entitled *as of course*, on motion or petition, at the end of eight days *after the return of the attachment*, to obtain the common order to revive; and in either such cases the Order to recite, as the ground for granting the same, that defendant is in contempt, and that the time limited by the Court to show cause against reviving the suit has expired.—[1833, Order 8.]

Of Revivor and Supplement.

Not to be necessary, in any bill of revivor or supplemental bill, to set forth any of the statements in the pleadings in the original suit, *unless the circumstances of the case may require it* (a).—[1841, August, Order 49.]

(a) In *Phelps v. Sproule*, 4 Sim. 318, it was held that it was not sufficient merely to state the prayer of the original bill in a suit to revive, but that so much of the original bill should be stated as

..

BILL—continued.

Service of.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, plaintiff need not require such party, *not being an infant*, to appear to and answer the bill, but may serve such party with a copy of it, whether the same be an original, amended, or supplemental bill, omitting the interrogating part; and such bill as against such party not to pray subpœna to appear and answer, but that such party upon being served with a copy of the bill may be bound by all the proceedings in the cause; but plaintiff not to be prevented from requiring such a party to appear to and answer the bill, or from prosecuting the suit against such party in the ordinary way, if he shall think

would show the right of the party to revive, and the Vice Chancellor allowed a demurrer to the bill, on the ground that it did not contain such statement.

What circumstances shall be deemed so special as to require the statements referred to in the above Order, will still be very much in the discretion of counsel; but while, on the one hand, the cases must be rare indeed where a demurrer will be allowed for want of them, the Court, on the other hand, has, it is conceived, conveyed a plain intimation that a bill will be deemed impertinent if they are inserted unnecessarily, or at any immoderate length.

In *Phelps v. Sproule* the defendants to the bill of revivor were not parties to the original bill; but that circumstance would not of itself now justify any lengthened reference to the pleadings in the original suit.

BILL, Service of—continued.

fit.—[1841, August, Order 23.] A memorandum of such service, and of the time when such service was made, to be entered by Plaintiff in the Six Clerks Office, he first obtaining, on motion *without notice*, an Order for leave to make such entry, which shall be granted on the Court being satisfied of a copy of such bill having been served, and of the time of service.—[Ibid. Order 24.] Where a defendant shall have been so served and a memorandum of such service entered, and such defendant shall not, within the time limited by the practice of the Court for that purpose, enter an appearance in common form, or a special appearance under the 27th Order, (*see tit. "APPEARANCE,"*) plaintiff may proceed in the cause as if the party served were not a party thereto, and such party shall be bound by all the proceedings in the cause as if he had appeared and answered.—[Ibid. Order 25.] But a party so served may, if he desires it, have the suit prosecuted against himself in the ordinary way, and in that case he shall enter an appearance in the common form, and the suit shall be prosecuted against him in the ordinary way; but the costs occasioned thereby shall be paid by the party so appearing, unless the Court shall otherwise direct.—[Ibid. Order

BILL, *Service of*—continued.

26.] If plaintiff require such a party to appear to and answer the bill, the costs occasioned thereby, and of all proceedings consequential thereon, to be paid by plaintiff, unless the Court shall otherwise direct.—[1841, Order 29.]

BOOKS, PAPERS, &c., Production of, *see tit.*
“MASTER,” p. 71, *post*.

CAUSES.

Where any cause set down to be heard before the Lord Chancellor is afterwards set down to be heard before the Master of the Rolls, or *vice versâ*, the solicitor for the plaintiff to certify the fact to the registrar of the Court where the cause was first set down, who shall cause an entry thereof to be made in the book of causes, opposite to the name of such cause, and a fee of 6s. 8d. to be allowed for such certificate, if made within eight days after the cause is so set down a second time.—[1828, Order 38.] And the same certificate to be made where any cause has become abated, or been compromised, and the same fee to be allowed if the solicitor certify as soon as the fact comes to his knowledge.—[*Ibid.* Order 39.]

Particulars of the several proceedings in,

CAUSES—continued.

to be furnished by any clerk in court, whether in the cause or not, at the request of *any person*, whether a party or not, a fee of *3s. 4d.* being paid for the clerk in court's certificate. —[1828, Order 43.]

To be set down for hearing before the Lord Chancellor, if the bill or information be marked "Lord Chancellor," and before the Master of the Rolls, if such bill or information be marked "Master of the Rolls;" and every interlocutory proceeding in a cause to be heard and determined by the judge before whom the cause shall be so originally appointed to be heard (*a*); (see Orders of 5th of

(a) Where the last Order upon merits previous to the Orders of 1837 coming into operation had been made at the *Rolls* against one of the defendants alone, and the other defendant afterwards moved to dismiss before the *Vice Chancellor*, the motion was refused with costs, although the defendant moving was not aware of the other Order.—*Tench v. Cheese and another*, 9 Sim. 150; see also *Wilkins v. Stevens*, 5 Jur. 403.

So in *Senior v. Wilks*, 2 Keen, 210, it was held that where the decree was made by the Vice Chancellor, and an Order upon a petition in the cause was afterwards made by the Master of the Rolls, reserving the costs of the petitioners, the reservation of costs did not give authority to the Master of the Rolls to hear a petition in the cause presented after the 20th of May, 1837, but that such petition must be heard by the Vice Chancellor.

And in *Brydges v. Bramfil*, Law Jour. Rep. (N. S.) Chanc. v. 7, p. 107, where exceptions had been taken to the answer of one defendant, which the Master reported insufficient, and the defendant filed exceptions to the report, which were heard before the Vice

CAUSES—continued.

May, 1837 & 11th Nov. 1841). But between the close of the sittings after any term, and the

Chancellor and disallowed, and there was subsequently a special Order, but without affidavit as to the further answer to be put in, a motion before the Master of the Rolls for production of books and papers admitted by the answer of another defendant, was opposed on the ground that the Order of the Vice Chancellor, which was the last, was necessarily an Order upon merits, meaning not of the cause, but merits with reference to which the Order was made, and the Master of the Rolls held that the case was within the second article of the 9th Order of May, 1837, and he could not entertain the application.

A party aggrieved by an Order made by the Master under 3 & 4 Will. 4, c. 94, s. 13, in a cause set down at the Rolls, has no right to appeal to the Lord Chancellor against the Order, being precluded by the 12th Order of May, 1837.—*Hill v. Gomme*, 3 Myl. & C. 503.

Where an Order of course has been obtained for setting down a cause in a branch of the Court which according to the above Orders ought to be heard in another branch, such Order cannot be treated as a nullity, but an application must be made for its discharge for irregularity.—*Wilkins v. Stevens*, Law Jour. Rep. (N.S.) Chanc. v. 9, p. 299.

A party suing on his own behalf, and as next friend of the infants, obtained at the Rolls the usual Order for the taxation of his solicitor's bill of costs, and the delivery of the papers to him. Afterwards the infant plaintiffs presented a petition to the Lord Chancellor, praying, amongst other things, that the Order for taxation might be discharged, which was refused. One of the plaintiffs having afterwards attained her age of twenty-one, presented a petition to the Master of the Rolls to discharge the Order for taxation, and his Lordship refused to make the Order, as it would interfere with that of the Chancellor.—*Pearse v. Brooke*, Jur. 4, p. 1054.

After decree at the Rolls, the plaintiff cannot, except by leave of

CAUSES—continued.

commencement of the sittings before or at the beginning of the next ensuing term, applications for special Orders may be made to any judge of the Court, but such orders shall be deemed in future proceedings in the cause as the Orders of the judge who would have made them in the ordinary sittings, and shall not be reheard to be discharged or varied otherwise than by the Lord Chancellor.—[1828, Order 15.]

To be set down by the plaintiff in the succeeding term after the commission to be obtained by him under this Order is returnable, but the plaintiff to be at liberty to set it down before the return of the commission.—[1831, Order 17.]

May be set down for hearing as well out of of term as in term (*a*).—[*Ibid.* Order 82.]

the Court, proceed in another Court in respect of the same matter, even though such proceedings are merely auxiliary.—*Wedderburn v. Wedderburn*, 2 Beav. 208.

Where the judge who directs an issue is promoted to another branch of the Court, the application for a new trial must be made to his successor.—*Footner v. Figes*, 2 Sim. 319.

(*a*) A cause may be set down for hearing in the cause-book of the same term in which publication has passed, provided it be not set down till after the last day of the term.—*Turnor v. Hitchon*, 2 Myl. & Cr. 710.

The Court has a right, on the application either of plaintiff or defendant, to advance at its discretion any cause which is ripe for hearing, i. e. after subpoena to hear judgment is returnable. *Semble*, the Lord Chancellor has no jurisdiction to discharge or vary an

CAUSES—continued.

Foreclosure causes, when ready for hearing, may be ordered to be advanced for hearing under the same circumstances and subject to the same rules as other causes may be ordered to be so advanced (*a*).—[1839, May, Order 4.]

Order made for that purpose by the Master of the Rolls.—*Hutchinson v. Stevens*, 1 Keen, 659; S. C. 2 Myl. & Cr. 452; *Reeves v. Gill*, 2 Keen, 671.

In a recent case the Vice Chancellor allowed a cause to be advanced, although it was stated by the defendant's counsel that a bill had been filed at the Rolls, the decree in which might render further proceedings in the cause sought to be advanced unnecessary, considerable delay having taken place previous to filing the bill at the Rolls.—*Evetts v. Hall*, V. C. June, 1841, Ed. MS.

But if an application to set a cause down as a short cause is opposed, and the defendant's counsel states that in his judgment it is not proper to be so heard, the application will be at once refused, *Reeves v. Gill*, 2 Keen, 671; *secus*, if it appears that the opposition is only for the purpose of delay.—*Mountford v. Cooper*, 1 Keen, 464.

Where application to advance a cause as a short cause is refused in consequence of the defendant's counsel stating that it is not a short cause, and the costs of the motion are reserved, the Court will order such costs to be paid to the plaintiff, if on the hearing it should be of opinion that the cause was a proper one to be heard as a short cause.—*Aldworth v. Robinson*, 2 Beav. 287. If the application is granted, the costs of an opposed motion will be costs in the cause.—*Carthew v. Barclay*, 10 Sim. 273.

(*a*) In *Brown v. Lockhart*, Law J. Rep. (N. S.) Chanc. v. 9, p. 53, it was held that a party applying under this Order to have a foreclosure cause advanced must pay the costs of the application.

COMMISSION.

To examine Witnesses.

Order for, to be obtained and served by plaintiff within three weeks from the filing of replication, *if he file replication without having been served with notice to dismiss*, and such commission to be returnable at the latest on the first return of the second term then next following (a).

If Order for, not obtained and served by plaintiff as above, defendant to be at liberty, without notice, to obtain such Order, returnable at the like period, and to have the carriage of such commission (b).

(a) The words "second term then next following" refer not to the second term following the undertaking to speed, but following the day on which the Order for the commission to examine witnesses is served.—*Williams v. Macdonnell*, 9 Sim. 400.

(b) In *Rattenbury v. Fenton*, 6 Sim. 368, the plaintiff filed a replication on the 11th July, and on the following day obtained an Order for a commission to examine witnesses, but did not take it out. On the 7th November he entered a rule to produce, and on the 18th a rule to pass publication. The defendant had witnesses to examine in the country; and by the rule given by the plaintiff on the 18th publication would pass on the 25th, unless the defendant enlarged it by suing out a commission under the 17th Order; and it was held on motion, without notice, that he was entitled to such commission.

A clerk in court, who acted both for plaintiff and defendants, applied to plaintiff's solicitor for the names of commissioners to take defendant's answer; held that this must be considered as a step taken by him on behalf of the defendants, although it was sworn

COMMISSION, *To examine Witnesses*—continued.

If sued out by plaintiff, and he neglects to execute and return the same at or within the time above stated, defendant to be entitled to an Order for a commission returnable on the last return of the term following that allowed to the plaintiff for the return of his commission.

When issued pursuant to this Order, the parties to have liberty to execute the same in term time, and publication to stand enlarged until the commission be returnable; and the plaintiff to be at liberty to set down the cause in the mean time without the necessity of inserting such directions in the Order for the commission(a).—[1831, Order 17.]

CONVEYANCE.

Where a Master is directed to settle a con-

that no instructions had been given by defendants to the clerk in court for preparing a commission, and that such application, if any, had been made by him as clerk in court of the plaintiff.—*Beavan v. Waterhouse*, 2 Beav. 58. See tit. "*BILL, dismissal of*," pp. 26 to 31 *ante*, and "*SUBPENA to rejoin*," *post*.

(a) This Order applies only to cases in which the plaintiff requires a commission.—*Williams v. Janaway*, 6 Sim. 77; *Smith v. Oliver*, 3 Myl. & Cr. 165.

Where a plaintiff obtains an Order for a commission, and serves it on the defendant, his subsequent abandonment of it does not withdraw the case from the operation of the above Order.—*Rayson v. Lees*, 1 Keen, 14.

CONVEYANCE—continued.

veyance in case the parties differ (a), the party entitled to prepare the conveyance to bring the draft of the conveyance into the Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice, such other party to have liberty to inspect the same without fee, and take a copy. And at or before the expiration of such eight days, or such further time as the Master shall allow, such other party shall either agree to adopt the conveyance, or signify his dissent therefrom, and may thereupon deliver a statement in writing of the alterations which he proposes in the draft of the conveyance. But if he do not deliver such statement, or if the other party refuses to adopt the proposed alterations, the Master to proceed to settle the conveyance; and if the Master adopt the proposed alterations, the costs of such proceedings to be borne by the other party.—[1831, Order 76.]

COSTS.

As to Answers.

Where no account, payment, conveyance,

(a) Where an infant heir is a party to the cause, and a necessary party to the conveyance, the words "if the parties differ" ought to be omitted in the Order.—*Calvert v. Godfrey*, 2 Beav. 267.

Costs, *As to Answers*—continued.

or other relief is sought against a party, but plaintiff shall require such party to appear to and answer the bill, the costs occasioned by plaintiff having required such party so to appear and answer, and of all proceedings consequential thereon, to be paid by plaintiff, unless the Court shall otherwise direct.—[1841, Aug. 26, Order 29.]

For separate answers or other proceedings of two or more defendants put in or taken by the same solicitor, the Master to consider whether such separate answers or other proceedings were necessary or proper, and disallow such part of the costs as he shall consider unnecessarily or improperly incurred.—[1828, Order 27.]

Of exceptions to an answer for insufficiency, the Master to certify by whom and in what proportions the costs of such exceptions and the reference ought to be borne.—[1833, Order 19.] And where a plaintiff obtains a decree with costs, the costs occasioned to the plaintiff by the insufficiency to be deemed part of the plaintiff's costs in the cause, such sum or sums being deducted therefrom as were paid by the defendant, upon the exceptions to the said answer being submitted to, or allowed [1828, Order 28], and upon the taxation of such general costs, regard shall

Costs, *As to Answers*—continued.

be had to the Master's certificate as above, and the costs be taxed and apportioned accordingly.—[1833, Order 19.]

Of insufficiency of *third answer*; Defendant to pay in addition to the 4*l.* costs heretofore paid, such further costs as the Court shall think fit to award.—[1828, Order 10.]

On Appeal or re-hearing.

Deposit for, to be increased to 20*l.*, to be paid to the adverse party *when the decree or order appealed from is not varied in any material point*, together with the further taxed costs occasioned by the appeal, or re-hearing, unless the Court shall otherwise order (*a*).—[1828, Order 42.]

As to Bills.

Costs occasioned to a defendant by any amendment of the bill to be deemed part of such defendant's costs in the cause (except as to any amendment which may have been made by *special* leave of the Court, or rendered necessary by any default of the defendant), but any sum or sums paid by the plaintiff at the time of any amendment to be

(a) Under special circumstances the deposit may be ordered to be returned to the appellant, though the appeal be dismissed.—*Rattenbury v. Fenton*, 1 Rep. temp. Brougham, 60—64; Cooper P. C. 435.

Costs, *As to Bills*—continued.

deducted (*a.*)—[1828, Order 29.] And in taxing costs under a decree in favour of the plaintiff, the amount of the defendant's costs occasioned by any amendment unnecessarily made, to be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.—[*Ibid.* Order 30.]

Of Cause being adjourned, &c.

Where a cause is adjourned on payment of costs of the day the amount of such costs to be 10*l.*, unless the Court shall order to the contrary.—[*Ibid.* Order 35.]

If adjourned through solicitor's neglecting to attend, or having omitted to deliver any paper necessary for the use of the Court, he to pay *personally* to all or any of the parties such costs as the Court shall award.—[*Ibid.* Order 36.]

Where a cause is struck out of the paper for want of parties or other defect of plaintiff, if it is again set down, defendant to be allowed the taxed costs occasioned by the first setting down, although he do not obtain the costs of the suit.—[*Ibid.* Order 34.]

(*a*) The Court will not on motion order payment of costs occasioned to a defendant by amendments, when it appears that the amendments were made under the advice of counsel, and not for the purpose of vexation or oppression.—*Monck v. The Earl of Tankerville*, 10 Sim. 284.

COSTS—continued.

Of Counsel.

Where two counsel appear at the hearing for the same party, the costs occasioned thereby to be allowed, though both were *juniors*, if the Master shall consider two counsel were necessary.—[1828, Order 33.]

Of Creditors.

A creditor who has come in and established his debt before the Master under a Decree or Order in a suit, to be entitled to the costs of so establishing his debt, and the same to be taxed by the Master and added to the debt.—[1841, August 26th, Order 47.]

As to Demurrer, see As to Pleas, infra.

Of Exceptions to Master's Reports, &c.

Deposit for, to be increased to 10*l.*, to be paid to the adverse party, if the exceptions are overruled, together with the further taxed costs occasioned by such exceptions, *unless the Court shall otherwise order*; but in case the exceptant in part succeed, the deposit to be dealt with and costs paid as the Court shall direct (a).—[1828, Order 41.]

(a) Where defendant took one general exception to a report finding his examination insufficient, and the Court held the report to be right in part and wrong in part, and overruled the exception, the Vice Chancellor gave the plaintiff the deposit, but under this Order

COSTS—continued.

On Proceedings before the Master.

When the Master has proceeded *ex parte*, in consequence of the non-attendance of any party, such proceeding not to be reviewed, unless the Master shall be satisfied that the party was not guilty of any wilful delay or negligence, and then only upon payment of *all costs occasioned by his non-attendance*; such costs to be certified by the Master at the time, and paid by the party or his solicitor before he shall be permitted to proceed on the warrant to review.—[1828, Order 54.]

And where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, the Master may certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending, by the absent party, or by his solicitor, or clerk in court personally, as the Master shall in his discretion think fit; and

refused to make any Order as to costs.—*Ward v. Fitzhugh*, 7 Sim. 42.

But in *Whitton v. Peacock*, 3 Myl. & K. 325, where one general exception, consisting of several distinct objections, which were specified as the grounds of the exception, was taken to a report in favour of a title, and the Court overruled the exception as to some of the objections, and allowed it as to one, and that forming comparatively but a small part of the exception, the deposit was returned.

Costs, Before the Master—continued.

upon motion or petition, *without notice*, the Court will make Order for payment of such costs accordingly.—[1828, Order 55.]

The costs of reviewing proceedings before the Master to be in his discretion, and to be paid as he shall direct.—[Ibid. Order 68.]

The costs of any separate report to be *in the discretion of the Court*.—[Ibid. Order 70.]

All Orders for referring an answer or other pleading or matter depending before the Court for scandal or impertinence, to contain a direction to the Master to expunge, &c.; and *the Master to be at liberty*, without further Order, *to tax the costs of such reference and consequent thereon*, and to direct by whom the same shall be paid, and the same to be recoverable by subpoena; but matter not to be expunged nor costs taxed till the expiration of four days from the filing of the report of such scandal or impertinence (a). — [1833, December, Order 22.]

The Masters to order and direct on all applications made to them by warrant under the Act of 3 & 4 of Will. 4, c. 94, or the Orders of December, 1833, whether the costs of the application shall be costs in the cause, or

(a) Where a report of scandal or impertinence has been excepted to, the Master cannot tax the costs of the reference under this Order without further Order.—*Desanges v. Gregory*, 6 Sim. 473.

COSTS, Before the Master—continued.

whether such costs or any part thereof shall be paid by any of the parties personally, and in the latter case the Masters *either to fix the sums* to be paid for such costs, *or tax the same* at their discretion; and the party to whom such costs are to be paid may sue out a subpœna for the same.—[1833, Order 23.]

As to Pleas and Demurrers.

(Taxed) of any plea or demurrer to be paid by plaintiff to defendant on the allowance thereof, and when such plea or demurrer is to the whole bill, then the further taxed costs of the suit also (*a*); unless in case of a plea the plaintiff shall undertake to reply, and then to be reserved, unless the Court shall otherwise order (*b*).—[1828, Order 31.]

(Taxed) of any plea or demurrer overruled, to be paid by defendant to plaintiff, unless the Court shall otherwise order (*c*).—[Ibid. Order 32.]

(*a*) Where a demurrer to the whole bill is allowed, but the plaintiff has leave to amend, the costs which he is to pay to the defendant are not the whole costs of the suit, but of the demurrer only.—*Hammond v. Messenger*, 9 Sim. 338.

(*b*) If plaintiff sets down the plea, but afterwards moves to take it out of the paper and amend the bill, he must equally pay the taxed costs of the plea.—*Jones v. Watter*, 4 Sim. 128.

(*c*) A witness on the overruling of his demurrer is liable to pay

Costs—continued.

Recovery of, see tit. "WRITS OF FI. FA." &c.

As to Reports.

Of separate reports to be in the discretion of the Court.—[1828, Order 70.]

Security for.

To be given by plaintiff out of jurisdiction to be increased from 40*l.* to 100*l.* (a).—[1828, Order 40.]

the same costs as a defendant under this Order.—*Suwyer v. Birchmore*, 3 Myl. & K. 578.

Where a demurrer *ore tenus* is allowed, but the demurrer on record is overruled, defendant must pay to plaintiff the taxed costs of the demurrer on record.—*Mortimer v. Fraser*, 2 Myl. & Cr. 173.

(a) By analogy to this Order the security for costs will be increased to 100*l.* in all cases where security is required, e. g. where plaintiff absconds, or gives a fictitious address.—*Bailey v. Gundry*, 1 Keen, 53; *Sandys v. Long*, 2 Myl. & K. 487.

A plaintiff who is a peer, and out of the jurisdiction, must give the usual security for costs; *Lord Aldborough v. Burton*, 2 Myl. & K. 401. And so must an officer in the king's service, where it appears upon the bill that he is resident out of the jurisdiction, unless it is distinctly stated in the bill that he is on actual service.—*Lillie v. Lillie*, 2 Myl. & K. 404.

In *Smith v. Hammond*, 6 Sim. 15, a defendant to a bill of interpleader who was resident out of the jurisdiction was ordered to give the security for costs required by this Order.

In charity cases the relator, if shown to be in indigent circumstances, will not be allowed to sue; but a *prochein ami* cannot be compelled to give security for costs on the mere ground of poverty.—*Fellows v. Barratt*, 1 Keen, 119.

If plaintiff fail to give the security ordered, defendant may move

Costs—continued.

Taxation of.

Where a Master is directed to tax costs in case the parties differ about the same, the party claiming the costs to bring the bill of costs into the Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice such other party to have liberty to inspect the same without fee, and take a copy thereof; and at or before the expiration of the eight days, or such further time as the Master shall allow, either to agree to pay the costs or dissent therefrom, and thereupon to be at liberty to tender a sum of money for the costs. But if he make no such tender, or if the other party refuses to accept the sum so tendered, the Master to proceed to tax the costs. And in case the taxed costs shall not exceed the sum tendered, then the costs of the taxation to be borne by the other party.—[1831, Order 76.]

CREDITORS.

„Creditors whose debts do not carry interest,

that it be given within a limited time, or that the bill be dismissed.—
Carnae v. Grant, 1 Sim. 348.

The defendant is entitled to require that the persons proposed as security be *solvent* persons. But the plaintiff may, if he prefer it, pay 120*l.* into Court in lieu of giving security.—*Cliffe v. Wilkinson*,
4 Sim. 122.

CREDITORS—continued.

who shall establish the same before the Master, under a Decree or Order, to be entitled to interest, at the rate of 4l. per cent., from the date of the decree, out of any estates which remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest, [1841, August 26, Order 46]; and also to the costs of so establishing their debts, to be taxed by the Master and added to the debt (a).—[Ibid. Order 47.]

(a) It will be observed that the words of this Order refer to debts which *shall be* established, and therefore although by virtue of the 51st Order it embraces all decrees in creditors' suits *now pending*, its operation will not, it is conceived, be so far retrospective as to include debts established prior to the date of the last new Orders. Even, however, with this limited construction, the Order now under consideration may be productive of serious inconvenience to parties who, from their knowledge of a testator's or intestate's affairs, have calculated upon a certain surplus, after having made every possible allowance for costs and expenses, and have made arrangements upon the basis of such calculation. Let us suppose, for instance, the case of a creditor's suit, where the decree has been made five years, but, owing to numerous other enquiries directed to be made, the Master has not been able to proceed with the enquiry as to debts; that the debtors and the amounts of their respective debts are well known to the parties beneficially interested in the surplus of the testator's estate, and that these debts, which are principally simple contract, amount to 20,000l.; that after making the most liberal allowance for costs and expenses, and assuming all the debts to be established, there would remain a surplus of 3,000l. or 4,000l.; and that relying upon the fairness of their estimate, the parties entitled to such surplus had executed securities upon their respective shares to the amount, or

DECREES, or DECRETAL or other ORDERS.

Where a defendant makes default at the hearing, the decree to be absolute in the first

nearly the amount, of what they might anticipate would be eventually payable to them. It can scarcely be said that, in the present state of the law, the creation of such charges was not perfectly justifiable, and yet the effect of this Order will be to render them wholly valueless; and the same result, although in a less aggravated form, may be produced in all cases where decrees are yet to be made, and much time may elapse before the distribution of the estate takes place.

The Editor feels great hesitation in suggesting even a doubt that may seem to be in opposition to the high authorities from whom the Orders of August, 1841, have emanated, and had they not received a sanction almost indisputable, he should have submitted that the object intended to be accomplished by this Order ought to have formed the subject of special legislative enactment. The Acts under which the recent Orders have been issued were passed, as their titles intimate, for the purpose of regulating the proceedings and practice of the Court of Chancery, and for facilitating the administration of justice in that Court; but do not, it is humbly conceived, authorize such a dealing with the rights of property as has heretofore been exercised only by the legislature. Thus the 3 & 4 W. 4, c. 94, s. 22, enacts, that it shall be lawful for the Lord Chancellor, with the advice of the Master of the Rolls and Vice Chancellor, or one of them, to make and issue such general Orders as they shall think fit for carrying the provisions of that Act into execution, and such other Rules and Orders, *not being inconsistent with the enactments and provisions of the Act*, as they shall think fit and proper, for simplifying, establishing, and settling the course of practice of the Court and its several offices; and the 2 & 3 Vict. c. 94, in like manner empowers the same authorities to make such alterations as may seem expedient in the forms of writs and commissions, and also in the form and mode of filing bills, answers, &c., and in the form and mode of pleading and taking evidence, and generally in the form and mode of proceeding to obtain relief, and in the general practice of the Court with relation

DECREES—continued.

instance, without giving the defendant a day to show cause, and to have the same force

thereto, and also in the form and mode of proceeding before the Master, and of drawing up, entering, and enrolling Orders, Decrees, &c.; but the enactments and provisions of these Acts relate exclusively to the practice and pleading of the Court.

By analogy also the Act of 3 & 4 W. 4, c. 42, which empowered the judges of common law to make rules for the regulation of the practice and pleading of their Courts, enacted, that such judges, or any eight or more of them, of whom the chiefs of each of the said Courts should be three, might by any Rule or Order, to be from time to time made within five years from the time when the Act should take effect, make such alterations *in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and such regulations as to the payment of costs, and otherwise for carrying into effect the said alterations as to them might seem expedient*; and it is remarkable that it was considered necessary in that Act to make a special enactment for the allowance of interest on simple contract debts, in cases where such debts had not previously carried interest.

In the Act 1 & 2 Vict. c. 110, there is a clause by which it is declared that all decrees and Orders of Courts of Equity whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, shall have the effect of judgments in the superior courts of law; and by another clause interest is given, at the rate of 4 per cent. per annum, upon every judgment debt, from the time of entering up the judgment; but a debt proved before the Master in a creditor's suit cannot, it is submitted, be considered in the light of a judgment entered up until the Master's report is confirmed. Indeed, this construction is supported by sect. 19 of the same Act, which provides that no judgment shall affect lands, &c. until a memorandum containing, amongst other things, the date of such judgment or decree, *and the account of the debt, damages, costs, or monies thereby recovered or ordered to be paid*, shall be filed in the manner

DECREES—continued.

and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shown.—[1841, August 26, Order 44.]

Every decree for an account of the personal estate of the testator or intestate to contain a direction to the Master to enquire and state what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.—[Ibid. Order 45.]

Clerical mistakes in, or errors arising from any accidental slip or omission, may, at any time *before enrolment*, be corrected, upon petition, without the form and expense of a rehearing (a).—[1828, Order 45.]

directed by the Act, a requisition which cannot be complied with until after confirmation of the Master's report.

(a) This Order only enables the Court to supply something which may make an existing direction complete, and not to make a new direction; therefore, where a decree had directed an account of the real estates of a testator sold since his death, and of those which remained unsold, but had omitted to direct an account of the proceeds of such estates as had been sold, it was held, that such omission could not be supplied upon petition under this Order.—*Whitehead v. North*, 1 Craig & Phil. 78.

In a recent case before the *Vice Chancellor*, it was also held that this Order applies only to cases where an Order is required to be *altered*, and not where a substantial Order is applied for; therefore, where there is an evident omission in a decree, the Court will supply the defect by an independent Order, although the motion for the

DECREES—continued.

Application to stay proceedings upon, when appealed from, must be made first to the judge who pronounced the Decree or Order.—[1828, Order 46.]

For referring any matter to a Master, if not brought into the Master's Office within two months, *any party to the cause, or any party interested in the reference*, may apply to the Court, by motion or petition, for the purpose of expediting the prosecution of it.—[Ibid. Order 48.] And where the party actually prosecuting it does not proceed before the Master with due diligence, the Master may, on the application of *any other party interested*, either as party to the suit or as one who has come in and established his claim, commit to him the prosecution of it, and thenceforth neither the party making default nor his solicitor, to be at liberty to attend the Master as the prosecutor of it.—[Ibid. Order 56.]

Enforcing of.

No writ of execution or attachment to be issued for compelling obedience to any Order or Decree, but the party required by any such Order to do any act shall, upon being duly

purpose may be opposed, provided the addition sought to be made is consequential on the directions contained in the decree.—*Jones v. Creswick*, V. C. Aug. 9, 1841, Leg. Obs. v. 22, p. 413.

DECREES, Enforcing of—continued.

served with such Order be held bound to do such act in obedience thereto.—[1841, August 26, Order 10.] And if any party who is by an Order or decree ordered to pay money, or do any other act in a limited time, shall, after due service of such Order, refuse or neglect to obey the same, the party duly prosecuting it to be entitled, at the expiration of the time limited for the performance thereof, to an Order for a serjeant-at-arms, and such other process as he hath hitherto been entitled to upon a return *non est investus* by the commissioners named in a commission of rebellion issued for nonperformance of a decree or Order.—[Ibid. Order 11.]

Every Order or Decree requiring any party to do an act, to state the time after service of the Decree or Order within which the act is to be done; and upon the copy of the Order to be served upon the party required to obey the same, a memorandum to be indorsed in the words, or to the effect, stated in this Order. See "ORDER."—[Ibid. Order 12.]

Upon due service of a Decree or Order for delivery of possession, and upon proof made of demand and refusal to obey such Order, the party prosecuting the same to be entitled to an Order for a writ of assistance.—[Ibid. Order 13.]

Every person, *not being a party* in any cause,

DECREES, *Enforcing of*—continued.

who has obtained an Order, or in whose favour an Order shall have been made, to be entitled to enforce obedience to such Order by the same process as if he were a party; and every person not being a party, against whom obedience to any Order of the Court may be enforced, to be liable to the same process for enforcing obedience to such Order as if he were a party.—[1841, Order 15.]

Forms of.

Bills and answers not to be recited in, nor Master's report in decree on further directions.—[1833, Order 27.] *For settled Forms of Decrees and Orders, see post, "Forms referred to in Orders of 1833," APPENDIX.*

Entry of.

All Decrees and Orders to be entered within one week after being left for entry, and all such entries to be examined by one of the clerks of entries, and marked with his initials, to denote such examination (a).—[1833, Order 30.]

Proceedings on, before the Master, see tit. "MASTER," p. 73, post; see also "CAUSES," "JURISDICTION," "PETITIONS."

(a) In *Busk v. Beetham*, Law Journ. (N. S.) Chanc. Rep. v. 9, p. 54, an Order was made that the entering registrar should *nunc pro tunc* mark the day of the month and year in which an Order for the payment of certain costs by the plaintiff had been left by the defendant to be entered, where the entry had been omitted.

DEMURRER (a).

Twelve days only to be allowed to a defendant to demur alone to any original, amended, or supplemental bill, or bill of revivor (b). And in every cause for an injunction to stay proceedings at law, plaintiff to

(a) Where a defendant resident in the country demurs to part of the bill, and answers the remainder, he must sue out a special *dedimus*.—*Tomlinson v. Swinnerton*, 1 Keen, 9.

(b) After the twelve days allowed for demurring had expired, the defendant referred the bill for scandal and impertinence. The Master reported in the affirmative, and seven days afterwards the defendant demurred to the bill. Held that the demurrer was regularly filed.—*Nedby v. Nedby*, 8 Sim. 334.

In computing the twelve days an intervening vacation is not to be excepted.—*Boys v. Morgan*, 9 Sim. 262.

Where defendants have not been guilty of wilful delay the Court will, under special circumstances, permit a demurrer to be filed after the expiration of the time allowed by the Orders of the Court.—*Attorney-General v. Mayor and Corporation of Carlisle*, 2 Sim. 427.

The Court still has jurisdiction to make an Order for time to answer on the overruling of a demurrer.—*Waterton v. Croft*, 6 Sim. 431.

When a demurrer for want of parties is allowed, with leave to amend, the plaintiff does not, by undertaking to amend, preclude himself from appealing against the allowance of the demurrer.—*Lidbetter v. Long*, 4 Myl. & Cr. 286.

After demurrer, the plaintiff may, before it has been argued, obtain an order of course to amend.—*Warburton v. London and Blackwall Railway Company*, 2 Beav. 253.

The pendency of a demurrer does not prevent the plaintiff from serving the defendant with a notice of motion.—*Wardle v. Claxton*, 9 Sim. 412.

DEMURRER—continued.

be entitled as of course on motion to such injunction, if defendant do not plead, answer, or *demur*, within eight days after appearance (a); and plaintiff in a bill of revivor, to be entitled as of course on motion, or petition, to the common order to revive, unless defendant plead, answer, or *demur* within the like period.—[1833, Order 10.]

In every petition praying that a day may be appointed for arguing a plea or demurrer, it must be stated whether the information or bill to which such plea or demurrer is put in, is marked with the words "Lord Chancellor," or with the words, "Master of the Rolls."—[1837, May 5th, Order 5.]

Where demurrer, or plea, to the whole bill shall be overruled, plaintiff, if he do not require an answer, may immediately file his note in manner directed by the 21st Order of 1841, (*see tit. "ANSWER,"* p. 3, *ante*,) unless the Court shall, upon overruling such demurrer or plea, give time to defendant to plead, answer, or demur; and in such case if defendant shall file no plea, answer, or

(a) The defendant is not precluded by this part of the Order from demurring within the twelve days, although the plaintiff may have obtained an Order for the common injunction.—*Poole v. Marsh*, 7 Sim. 521.

DEMURRER—continued.

demurrer within the time so allowed by the Court, plaintiff, if he do not require an answer, may, on the expiration of such time, file such note.—[1841, Aug. 26, Order 33.]

Where defendant shall file a demurrer to the whole bill, the demurrer to be held sufficient, and plaintiff to be held to have submitted thereto, unless he shall, within twelve days from the expiration of the time allowed to the defendant for filing such demurrer, cause the same to be set down for argument; and where the demurrer is to part of the bill, the demurrer to be held sufficient, and plaintiff to have submitted thereto, unless he shall, within three weeks from the expiration of the time allowed for filing such last mentioned demurrer, cause the same to be set down for argument.—[1841, Order 34.]

No demurrer, or plea, to be held bad and overruled on argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to, [1841, Order 36]; nor because the answer of defendant may extend to some part of the same matter as may be covered by such demurrer, or plea.—[1841, Order 37.]

DISCOVERY.

Where a defendant in equity files a cross

DISCOVERY—continued.

bill against the plaintiff in equity for discovery only, the costs of such bill and the answer thereto to be in the discretion of the Court at the hearing of the original cause.—[1841, August, Order 41.]

The answer to such cross bill may be read and used by the party filing such cross bill in the same manner and under the same restrictions as the answer to a bill praying relief.—[Ibid. Order 42.]

DISTRINGAS—how to be issued for restraining transfer of stock, see 5 Vict. c. 5, s. 5, and Orders of 17th November, 1841, pp. 377—379, *post*.

DIVIDENDS.

In all Orders directing the payment of dividends, the time when the first of such payments, and when all subsequent periodical payments, whether quarterly or otherwise, shall be made, to be expressed in words at length.—[1833, Order 28.]

See tit. "MONEY," "STOP ORDER."

ELECTION.

In all cases in which it shall be alleged that the plaintiff is prosecuting the defendant in this Court and also in some other Court for the same matter, the defendant, in eight

ELECTION—continued.

days after filing his answer or further answer, to be entitled *as of course* on motion or petition to the usual Order for the plaintiff to make his election in which Court he will proceed, unless the plaintiff shall, before the expiration of the same eight days, have delivered exceptions to the defendant's answer, or have referred his further answer on former exceptions. And in case the plaintiff shall have delivered such exceptions, or referred the defendant's further answer within such time, the defendant may, by notice in writing, to be served on the plaintiff's clerk in court, require the plaintiff to procure the Master's report on such exceptions within four days from the service of such notice. And if the plaintiff shall not procure the Master's report in four days accordingly, or if the exceptions be not allowed, the defendant to be entitled, *as of course*, on motion or petition, to the usual Order for the plaintiff to elect in which Court he will proceed. But in either of such cases the plaintiff to be at liberty to move that such Order may be discharged on the merits confessed in the answer.—[1839, May 9th, Order 1.]

EXAMINERS.

The examiner who takes the examination-

EXAMINERS—continued.

in-chief of any witness may take his cross-examination also.—[1828, Order 26.]

Empowered to administer the oaths to, and take the affirmations of witnesses examined before them.—[3 & 4 W. 4, c. 94, s. 27.]

To take the depositions of witnesses in the first person.—[Ibid.]

EXHIBITS.

Provable, by the present practice, at the hearing *vivâ voce*, may be proved by affidavit of the witness who would be competent to prove the same *vivâ voce* at the hearing.—[1841, Aug. 26, Order 43.]

INJUNCTION.

In every cause for an injunction to stay proceedings at law, if defendant do not plead, answer, or demur to plaintiff's bill within eight days after appearance, the plaintiff to be entitled, as of course, upon motion, to such injunction (a).—[1838, Order 10.]

(a) Under this Order the common injunction may be obtained on any day out of term, to which the seal may be adjourned; *Earl of Chesterfield v. Bond*, 2 Beav. 263; *Brierly v. Walmsley*, 1 Keen, 141; but the rule does not apply to a motion to commit a party for breach of injunction.—*Saxby v. Saxby*, 7 Sim. 140.

In *Brooks v. Cooper*, 11th August, 1841, the Lord Chancellor

INJUNCTION—continued.

Where common injunction, for want of answer, is awarded, the Order to recite, as the ground for granting the same, that defendant has omitted to put in his plea, answer, or demurrer within the time limited by the Court (a).
—[1833, Order 11.]

Where plaintiff has obtained the common injunction to stay proceedings at law, he may (either before or after answer, and whether such injunction shall or not have been continued to the hearing) obtain an Order, *as of course*, for leave to amend the bill, without prejudice to the injunction; but such Order shall contain an undertaking by plaintiff to amend the bill within a week after the date of the Order, and in default thereof, the Order to become void. And in case the bill be amended pursuant to such Order, the defendant may thereupon, although he may not have

determined *contrâ*, *Lee v. Ravenscroft*, 6 Sim. 474, that this Order applies to *amended* as well as to original bills.

It is not necessary for the purpose of obtaining an Order of committal for contempt, by breach of an injunction, that the writ of injunction should be produced to the Court, or that it should have been drawn up at the time the application is made; an Order of the Court is binding on a party as soon as pronounced.—*M'Neil v. Garratt*, 5 Jur. 836.

(a) An answer filed on the morning on which a motion is made to extend the common injunction, is not sufficient to prevent its being extended.—*Thompson v. Byrom*, 2 Beav. 15.

INJUNCTION—continued.

put in his answer to the bill or the amendments thereof, move the Court, on notice, to dissolve the injunction, on the ground that the bill, as amended, does not, even if the amendments be true, entitle the plaintiff thereto.—[1839, May 9th, Order 2.]

In case an injunction to stay proceedings at law be prayed for by the bill, and shall either not be obtained, or, having been obtained, shall have been dissolved upon the merits stated in the answer, and the plaintiff shall afterwards amend his bill, and the defendant shall not plead, answer, or demur to the amended bill within eight days after appearance, plaintiff may move for an injunction on affidavit of the truth of the amendments.—[Ibid. Order 3.]

Order *nisi* for dissolving the common injunction may be obtained upon petition as well as by motion; but every such Order must be served two *clear* days at least before the day upon which cause is to be shown against dissolving (*a*).—[1828, Order 23.]

INTEREST, *see tit. "CREDITORS,"* p. 55, *ante*.

(*a*) An Order *nisi* to dissolve the common injunction, obtained after exceptions to the answer have been filed, is irregular.—*Howes v. Howes*, 1 Beav. 197.

INTERROGATORIES.

For the Examination of Witnesses.

The last interrogatory commonly used to be altered, and to be in the words stated in this Order (a).—[1833, Order 32.]

To Bills, see tit. "BILL."

JURISDICTION.

Every application to stay proceedings upon any Decree or Order which is appealed from, must be made first to the judge who pronounced the Decree or Order.—[1828, Order 46.]

And every application for the new trial of any issue at law directed by a judge of this Court, must be made first to the judge who directed such issue (b).—[1828, Order 47.]

All applications for time to plead, answer, or demur, and for leave to amend bills, and for enlarging publication, *and all special applications* for leave to withdraw replication, as well as to amend bill, and all such other measures relating to the conduct of suits in the Court of Chancery as the Lord Chancellor, with the assistance of the Master of the

(a) A party is not now at liberty to use the old last interrogatory, but he is not compelled to use the interrogatory set forth in the above Order.—*Gover v. Lucas*, 8 Sim. 200.

(b) If the judge who directed an issue has been promoted to another branch of the Court, application for a new trial must be made to his successor.—*Footner v. Figes*, 2 Sim. 319.

JURISDICTION—continued.

Rolls and Vice Chancellor, *or one of them*, shall by any General Order or Orders direct, to be heard and determined by the Masters, who may direct in what manner the costs of such applications shall be paid, with power for either party to appeal by motion to the Lord Chancellor, Master of the Rolls, or Vice Chancellor, and the Order made on such appeal to be final; and no such application to be in future heard by any of the judges of the Court of Chancery except on appeal.—[3 & 4 W. 4, c. 94, ss. 13, 14, and 15 (a); 1833, Order 20.]

Causes to be set down for hearing before the judge before whom the same shall be marked to be heard, and all interlocutory proceedings to be heard and determined by the same judge.—[See Orders of 5th May, 1837; *see also tit. "CAUSES," "DECREES."*]

MASTER (b).

As to Accounts to be brought in before, see tit. "ACCOUNTS."

(a) In *Cullingworth v. Grundy*, 2 Myl. & K. 359, it was held, that the jurisdiction of the Court to make Orders on *motions of course*, was not taken away by the operation of the above statute and the Orders founded thereon. As to the jurisdiction of the Court and of the Master under this statute, see observations on the general construction of the orders, *post, et seq.*

(b) In *Smith v. Webster*, 3 Myl. & Cr. 244, it was held that

MASTER—continued.

As to Affidavits to be used before, see tit.

“AFFIDAVITS.”

As to Conveyance to be settled by, see tit.

“CONVEYANCE.”

As to Reports of, and Exceptions to Reports, see tit. “REPORTS.”

As to Taxation of Costs by, see tit. “COSTS, Taxation of.”

As to reference to, respecting Preliminary Accounts and Inquiry, see tit. “PRELIMINARY ACCOUNTS AND INQUIRIES.”

To enter in a book, to be kept for the purpose, the name or title of every cause or matter referred to him, and the time when the Decree or Order is brought into his office, and the date and description of every subsequent step taken before him in the cause or matter, and the attendance or non-attendance of the several parties on each of such steps.—[1828, Order 49.]

the Masters have no power to dispense with or relax the General Orders of the Court; but in *Milbanke v. Stevens*, 8 Sim. 160, the Vice Chancellor said he had the sanction of the Lord Chancellor for stating, that the Masters, on application being made before them, under the Act of 3 & 4 W. 4, c. 94, had the same power to dispense with the strict letter of the General Orders of the Court as the Court itself had.

As to the general construction of this statute, and the Orders made in pursuance of it, see observations, *post, et seq.*

MASTER—continued.

Upon the bringing in of every decree or order, the solicitor to take out a warrant appointing a time, which is to be settled by the Master, for taking into consideration the matter of the said decree or order, and serve the same on the clerks in court of the respective parties, or upon the parties, or their solicitors, where they shall have no clerks in court.—[1828, Order 50.] And at the time appointed for considering the matter of the decree or order, the Master to regulate, as far as may be, the manner of its execution; e.g., to state what parties are entitled to attend future proceedings(a), to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters requiring evidence shall be proved by affidavit, or by examination of wit-

(a) Leave has been granted on petition, under special circumstances, to persons who are not parties to the suit to intervene in proceedings before the Master, and even two distinct sets of petitioners have been allowed to attend the Master, on the understanding that only one bill of costs should be allowed.—*Attorney-General v. Shore*, 1 Myl. & Cr. 394.

MASTER—continued.

nesses, (a) and in the latter case, if necessary, to issue his certificate for a commission; and, if he think it expedient, *to fix a certain time or certain times within which parties are to take any certain proceeding or proceedings before him* [1828, Order 51]; and upon any subsequent attendance before him in the same cause, or matter, to fix a certain time or certain times within which the parties are to take any other proceeding or proceedings before him.—[Ibid. Order 52.]

To proceed *ex parte*, if he thinks it expedient, where some or one, but not all the parties attend at an appointed time, whether the same is fixed by him personally, or upon a warrant [Ibid. Order 53]; such proceeding *ex parte* not to be reviewed in his office, unless, upon special application to him for the purpose by a party who was

(a) If a reference as to title is made on motion, the Master, under this order, has the same power to examine witnesses as he would have had if the reference had been made by decree.—*Woodroffe v. Titterton*, 8 Sim. 238.

Where a witness who has been examined in the cause is afterwards examined before the Master, the rule restricting his examination to points upon which he has not been previously examined may, under special circumstances, and in furtherance of the purposes of justice, be relaxed.—*Rowley v. Adams*, 1 Myl. & K. 543.

MASTER—continued.

absent, he shall be satisfied that the party was not guilty of *wilful delay or negligence*, and then only upon payment of all costs occasioned by his non-attendance, such costs to be certified by the Master at the time, and paid by the party, or his solicitor, before he shall be permitted to proceed on the warrant to review.—[1828, Order 54.]

To certify what amount of costs, if any, shall be paid to the party or parties attending by the absent party or parties, or by his or their solicitor or solicitors, clerk or clerks in court, personally, where a proceeding fails by reason of the non-attendance of any party or parties, and he does not think it expedient to proceed *ex parte*; and upon motion, or petition, *without notice*, the Court will make order for the payment of such costs accordingly.—[Ibid. Order 55.]

May, upon application of *any party interested*, either as a party to the suit, or as one who has come in and established his claim under a decree or order, where the party actually prosecuting the decree or order does not proceed with due diligence, commit to him the prosecution of such decree or order; and from thenceforth neither the party making default, nor his solicitor, to attend the Master as the prosecutor

MASTER—continued.

of the said decree or order.—[1828, Order 56.](a)

May without order proceed in all matters *de die in diem*.—[Ibid. Order 58.]

To certify to the Court the several proceedings had in his office in any cause or matter, and the dates thereof, on the application of *any* person made to the Court.—[Ibid. Order 57.]

Every warrant before, to be considered as peremptory, and the Master to be at liberty to continue the attendance beyond the hour, and during such time as he thinks proper, and to increase the fee for the solicitor's attendance in proportion to the time actually occupied; and in case he shall not be attended by the solicitor, or a competent person

(a) Notwithstanding the Master may have refused an application under this Order to take the prosecution of a decree from the plaintiff, and commit it to another party, the Court is at liberty to grant the application, the Master's judgment not being final.—*Wyatt v. Sadler*, 5 Sim. 583.

Where great delay has occurred in the prosecution of a decree for the administration of assets, a creditor may apply to have the conduct of the cause, though it has become abated by the death of the defendant.—*Cook v. Bolton*, 5 Russ. 282.

This Order applies only to proceedings in the Master's office, and therefore a plaintiff, from whom the Master has taken the conduct of the suit, is not thereby precluded from afterwards making an application to the Court in the suit.—*Whitehead v. North*, 1 Craig & Phil 78.

MASTER—continued.

on his behalf, to disallow the usual fee for the solicitor's attendance, taking care to mark his determination in his attendance-book, and also on the warrant for attendance.—[1828, Order 59.]

May exercise a discretion with regard to the production of books and papers directed by any decree or order to be produced before him, and determine what books, papers, or writings are to be produced, and *when and for how long they are to be left* in his office; or in case he shall not think it necessary that such books, &c. shall be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same at such time and in such manner as he shall deem expedient.—[Ibid. Order 60.](a)

(a) This Order extends to the production of books and papers under orders or decrees before the date of the New Orders; but the Master may exercise his discretion as to what books or papers shall be produced, though the order or decree under which he is proceeding requires the parties to produce, on oath, *all* books and papers.—*In the matter of the Parishes of Lantrisant*, 1 Russ. & M. 25.

The common direction that a party shall produce before the Master all books and papers relating to the matters in question as the Master shall direct, entitles the Master to require by his warrant that all such books and papers generally shall be *left* in his office.—*Shirley v. Earl Ferrers*, 1 Myl. & Cr. 304.

Where a defendant, under an order of the Court, had left in the

MASTER—continued.

As to parties accounting before, see tit. "ACCOUNTS."

As to regulations concerning receivers, see tit. "RECEIVER."

Not to receive further evidence as to any matter depending before him, after issuing the warrant on preparing his report; but not to issue such warrant without previously requiring the parties to show cause why such warrant should not issue.—[1828, Order 67.] And *no warrant to review* any proceeding to be allowed to be taken out, except by permission of the Master, *upon special grounds* to be shown to him for that purpose; and the costs of such review when allowed to be in the discretion of the Master, and paid as he shall direct.—[Ibid. Order 68.]

Empowered to examine any witness *vivâ voce*; and in such case, on a note from the Master, the subpoena for the attendance of the witness to be issued from the subpoena office;

hands of his clerk in court various deeds, documents, and writings, the Court, on motion, ordered them to be left in the Master's office. Quære, whether the clerk in court would be justified in complying with a direction of the Master for the purpose?—*Glover v. Williams*, Cooper, P. C. 438.

The Court will not order documents produced under a bill of discovery to be produced on a trial at law, but leaves parties to make the best use of the discovery they can.—*Brown v. Thornton*, 1 Myl. & Cr. 249, sed q. *Crowley v. Perkins*, 5 Sim. 552.

MASTER—continued.

and the evidence on such *vivá voce* examination to be taken down by the Master, or by the Master's clerk in his presence, and preserved in the Master's office, in order that the same may be used by the Court if necessary (a).—[1828, Order 69.]

May make separate reports. See *tit.* "REPORTS."

May examine *any creditor or other person coming in to claim* before him either upon written interrogatories, or *vivá voce*, or in both modes; the evidence upon such examination being taken down at the time by him, or his clerk in his presence, and preserved, in order that the same may be used by the Court if necessary.—[Ibid. Order 72.]

Any party wishing to complain of any matter introduced into any state of facts, affi-

(a) The discretion given to the Master by this Order to examine witnesses *vivá voce*, cannot be exercised after issuing the warrant on preparing his report.—*Trotter v. Trotter*, 5 Sim. 383.

But where a matter is referred back to the Master, he is at liberty, without special order, to receive further evidence thereon.—*Cottrell v. Watkins*, 1 Beav. 366.

The examination of witnesses *vivá voce* under this Order may be the subject of exception; but the Court will not interfere with the Master's judgment in the conduct of inquiries before him, unless upon his report or certificate regularly brought before the Court by exception.—*Maddeford v. Austwick*, Law Jour. Rep. (N. S.) v. 10, p. 106.

MASTER—continued.

davit, or other proceeding before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's office is insufficient, may, without any order of reference by the Court, take out a warrant for the Master to examine such matter, and *the Master may expunge* any such matter which he shall find to be scandalous or impertinent.—[1828, Order 73.]

In deciding on the sufficiency or insufficiency of any answer or examination, to take into consideration the *relevancy or materiality* of the statement or question referred to.—[Ibid. Order 74.]

May order estates or other property directed to be sold before him to be sold in the country, and at such place and by such person as he shall think fit, if he shall think it for the benefit of the parties interested.—[Ibid. Order 75.]

To tax costs and settle conveyance in case the parties differ as to mode of proceeding, for which see *tit. "Costs, Taxation of,"* and "CONVEYANCE."—[Ibid. Order 76.]

Whenever the same solicitor is employed for two or more parties, the Master may, at his discretion, require that any of the said parties shall be represented before him by a

MASTER—continued.

distinct solicitor, and may refuse to proceed until such party is so represented.—[1828, Order 77.]

All references to a Master to be made to the Master in rotation, unless there has been a previous reference in the cause or matter, and then to the Master to whom the last reference was made (a).—[1833, Orders 15 and 16.] And for the purpose of ascertaining the Master in rotation, one of the six clerks shall give to the solicitor of the plaintiff or defendant, requiring the same, a certificate of the bill filed, which certificate shall, on the same or the following day, be marked by the Master of the day at the public office with the name of the Master in rotation for such cause; and such certificate so marked (having first been produced to the said Master in rotation, who shall cause a minute thereof to be taken) shall on the same day be returned to the six clerk, and filed by him; and he shall add the name of such Master to the original entry of the cause in the six clerk's book, and

(a) Where a decree in a cause, in which previous references have been made, directs a reference to the Master in rotation, the decree will be carried to the Master to whom the previous references were made.—*Attorney-General v. Shore*, 6 Sim. 460.

Where a reference has been made to the Vacation Master, the cause is excepted from the operation of this Order.—*Kelsey v. Larken*; 4 Jur. 363.

MASTER—continued.

shall also cause the name of the cause and of such Master to be entered in a book to be kept by the six clerks for that purpose in the Six Clerks' Office, which shall be open to inspection at all times during office hours without fee.—[1833, Order 17.]

To hear and determine *all applications for time to plead, answer, or demur, and for leave to amend bills, and for enlarging publication*, and all such other matters relating to the conduct of suits, in such manner and under such rules as the Lord Chancellor, with the advice and assistance of the Master of the Rolls and Vice Chancellor, *or one of them*, shall by any General Order or Orders direct; and either party may appeal by motion from the order made on such application to the Lord Chancellor, Master of the Rolls, or Vice Chancellor, but the order made upon such appeal to be final, and no such application to be heard by any of the judges of the Court of Chancery except on appeal. (3 & 4 Will. 4, c. 94, ss. 13 & 14) (a).

All special applications for leave to withdraw replication, as well as to amend bill, to be heard and determined by the Master in

(a) Whether the Masters on application under this statute have power to dispense with the strict observance of the General Orders seems at present doubtful.—See *Milbanke v. Stevens*, 8 Sim. 160; and *Smith v. Webster*, 3 Myl. & Cr. 244; and n. p. 71, *ante*.

MASTER—continued.

rotation; and such applications, and all other special applications under the act of 3 & 4 Will. 4, c. 94, to be made by taking out a warrant, at the foot whereof a notice shall be written, specifying the object of the application; and the same to be served two clear days before the return thereof (a).—[1833, Order 20.] On all such applications the Master to order and direct whether the costs of the application shall be costs in the cause, or be paid by any of the parties personally; and in the latter case the Master either to fix the sum to be paid for such costs, or tax the same at his discretion; and the party to whom such costs are to be paid to be entitled to sue out a subpoena for the same.—[Ibid. Order 23.]

All orders upon such applications to be drawn up in a short form, and after being signed by the Master to be entered in a book

(a) The jurisdiction of the Court to make orders upon *motions of course* is not taken away by the operation of the 3 & 4 Will. 4, c. 94, and the Orders founded thereupon.—*Cullingworth v. Grundy*, 2 Myl. & K. 359. See also notes as to amendment of bills, p. 20, *ante*.

A motion for leave to examine witnesses, and that publication may be in the meantime enlarged, *after publication has actually passed*, is not an application which comes within the meaning of the 3 & 4 Will. 4, c. 94, but ought to be made to the Court in the first instance.—*Carr v. Appleyard*, 2 Myl. & Cr. 476.

MASTER—continued.

to be kept for that purpose in his office, and then to be marked by the Master, or his chief clerk, who shall sign his initials thereto; and the said orders to be binding (unless reversed or varied on appeal) and be enforced in like manner as if made by the Court; and the original order, or any duplicate thereof, which the Master is to grant on the application of any party, so signed and entered as aforesaid, to be a sufficient warrant to every officer of the Court to do the act therein mentioned, or to permit the same to be done; and each party to be at liberty to inspect the entry of all such orders in the said entering-book, without fee.—[1833, Order 24.]

All such applications during the period between the last seal after Trinity Term and the seal next before Michaelmas Term to be made to the sitting Master of the vacation; but all subsequent applications, and all references in the cause, to be made to such Master in rotation.—[Ibid. Order 25.]

As to the fees to be received by Masters and their clerks, see schedule to Orders of December, 1833, and Order 34 of 1833.

MASTER EXTRAORDINARY.

May take any affidavit, or do any other act incident to the office of Master extraordinary

MASTER—continued.

in Chancery, at any place distant *not less than ten miles from the hall in Lincoln's Inn.*—
[1833, Order 33.]

MONEY, OR COSTS, ordered to be paid.

Recovery of, by *Fi. fa.* or *Elegit*, *see tit.*
“WRITS of *Fi. fa. &c.*”

MONEY AND SECURITIES.

Payment, investment, and transfer of.

In all cases where any sums of money, or any securities, or other effects, shall be directed to be paid into, or deposited in the Bank of England, in the name and with the privity of the accountant-general; and, where any such sum of money, or any securities or other effects, be directed to be paid out, or invested in the purchase of securities, transferred or carried over, or delivered out, the exact sum of money and amount of securities so to be paid out, invested, transferred, or carried over, to be ascertained by the registrar, and specified and expressed in the order in words written at length (a), except

(a) This Order has been held to apply to those cases only in which the amount to be paid out can be ascertained at the time when the order for payment is made, and not to cases where the amount is to be verified by affidavit.—*Piggott v. Garraway*, 9 Sim. 260.

MONEY, Payment, &c.—continued.

in the case of residues of money, or securities, remaining after a portion directed to be applied for particular purposes, the amount of which cannot be ascertained at the time of making the said order, in which cases the order to direct that the amount of such residues and shares of residues be ascertained and specified by affidavit.

And in all cases where a *residue of cash or securities* shall be directed by any order to be operated upon by the accountant-general, the exact amount of such residue, where the same can be done, shall be ascertained by the registrars, and expressed and specified in the order in words at length, so that the amount of such residue shall appear on the face of the order.

And all persons (whether representatives or others) who shall be directed to pay in, transfer, or deposit, any sum of money, securities, or other effects in the name of the accountant-general, and all persons (whether representatives or others) to whom any sums of money, securities, or other effects, shall be directed to be paid out, transferred, carried over, or delivered out by the accountant-general, shall be described by name, except in the case of bodies corporate, companies, or societies, in such order, and not

MONEY, *Payment, &c.*—continued.

merely as plaintiffs, or petitioners, or the like, except in cases of payments, transfers, or carryings over, directed to be made to or by representatives, where no probate, or letters of administration, shall have been taken out at the time of making such orders; and the Christian and surnames, or titles of honour, of all such persons, and the titles of all such bodies corporate, companies, and societies shall be written at length, and without abbreviations, in such orders.

In all orders directing the payment of dividends and annuities, the times of payment to be specified in words at length.

All orders directing the laying out of sums of money of uncertain amount in the purchase of securities to direct that such investments shall be made when the money shall amount to a competent sum and not sooner.

In all cases where it shall be referred to a Master to ascertain and apportion the amount of money, or securities, to be paid into the Bank of England in the name and with the privity of the accountant-general, and of any securities to be carried over or transferred to the accountant-general, or to ascertain or apportion the amount of money to be paid out or invested in the purchase of securities, or of securities to be sold,

MONEY, Payment, &c.—continued.

carried over, or transferred by the accountant-general, the exact amount of such money or securities respectively shall be ascertained by the Masters, and stated in the report in words at length, except in the case of residue of money, or securities remaining after a portion directed to be applied to certain purposes, and the amount of which portions cannot be ascertained at the time of making such report, in which case the amount of such residue and portions shall be ascertained by affidavit.

And in all cases where a *residue of cash, or securities*, shall be directed by an order to be operated upon by the accountant-general, the exact amount of such residue, where the same can be done, to be ascertained by the Masters, and expressed and specified in the order in words at length, so that the amount of such residue shall appear on the face of the order.

And in all such cases, the persons by or to whom money is to be paid, or securities carried over, or transferred, shall be described by name, (except in the case of bodies corporate, companies, or societies,) in such reports, and not merely as plaintiffs or petitioners, or the like, except in the cases of payments, transfers, or carryings over, directed to be

MONEY, *Payment*, &c.—continued.

made to, or by representatives, where no probate, or letters of administration, shall have been taken out at the time of making the said report, and the christian and surnames or titles of honour of all such persons, and the titles of all such bodies corporate, companies, and societies, shall be written at full length in the said report.—[1833, Order 28.]

MOTIONS.

Before whom to be made. See *tit.* “**PETITIONS.**”

ORDERS. See *tit.* “**DECREES.**”**PARTIES.**

In all suits concerning real estate, which is vested in trustees by devise, *and such trustees are competent to sell and give discharges*, they to represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators, in suits concerning personal estate, represent the persons beneficially interested in such personal estate; and the persons beneficially interested in such real estate need not be made parties; but the Court may

PARTIES—continued.

on the hearing order such persons to be made parties.—[1841, August, Order 30.]

In suits to execute the trusts of a will, the heir-at-law need not be made a party. But plaintiff may make him a party where he desires to have the will established against him.—[Ibid. Order 31.]

Where plaintiff has a joint and several demand against several persons, either as principals or sureties, he need not make all persons liable parties to a suit respecting it, but may proceed against one or more of the persons severally liable.—[Ibid. Order 32.]

If a defendant by his answer object that a suit is defective for want of parties, plaintiff may, *within fourteen days after the answer is filed*, set down the cause for argument on that objection only, and the purpose for which it is so set down shall be notified by the following entry, to be made in the registrar's book, viz. "Set down upon the defendant's objection for want of parties;" and where plaintiff shall not so set down his cause, but shall proceed therewith to a hearing notwithstanding the objection, he shall not at the hearing, if the defendant's objection be allowed, be entitled as of course to an order to amend; but the Court may, if it thinks fit, dismiss the bill.—[Ibid. Order 39.]

PARTIES—continued.

If a defendant at the hearing object that the suit is defective for want of parties, not having by plea or answer taken the objection *and therein specified by name or description* the parties to whom the objection applies, the Court may make a decree, saving the rights of the absent parties.—[1841, Order 40.]

PETITIONS.

Filing and Service of.

Every notice of motion, and every petition, notice of which is necessary to be served at least *two clear days* before the hearing of such motion or petition.—[1828, Order 22.]

Before any order made on a petition be passed, the original petition to be filed with the clerk of the reports (a).—[1833, Order 27.]

Before whom to be heard.

Every petition presented, or motion made,

(a) Where a petition presented at the Rolls was afterwards heard by the Lord Chancellor, who made an order upon it, but before the order was made the original petition was lost, the Lord Chancellor allowed a copy of it, certified by the under secretary of the Rolls to be a true copy, to be filed in pursuance of this Order.—*Sanderson v. Walker*, 1 Myl. & Cr. 359.

So where a petitioner refused to deliver the original petition for the purpose of being filed with the clerk of the reports, leave was given to the respondents to file, in its stead, the copy with which they had been served.—*Andrews v. Walton*, 1 Myl. & Cr. 360.

PETITIONS, *Before whom to be heard*—continued.

pursuant to the liberty to apply contained in a decree or decretal order of the Lord Chancellor or Vice Chancellor, shall, as to petitions, be addressed to and set down to be heard before the Lord Chancellor, and as to motions be made before the Lord Chancellor or Vice Chancellor; and no such petition or motion to be addressed to or made before the Master of the Rolls without the special leave of the Lord Chancellor. — [1837, May, Order 7.] And every such petition or motion, pursuant to the liberty to apply, contained in any decree or decretal order of the Master of the Rolls, shall be addressed to and set down to be heard and be heard before the Master of the Rolls.—[Ibid. Order 11.]

All interlocutory applications by way of motion or petition (other than applications for orders of course), in any case where the original bill or information is marked "Lord Chancellor," or where orders have been made in it by the Lord Chancellor or Vice Chancellor, to be made to the Lord Chancellor or Vice Chancellor, and not without special leave of the Lord Chancellor to be made to the Master of the Rolls, and *vice versa*.—[Ibid. Order 12.]

But all applications for orders of course to be made on petition or motion may be made

PETITIONS, *Before whom to be heard*—continued.

in the same manner as if the above orders had not been made; but where cause is to be shown on any order *nisi*, such cause must be shown before the judge appointed to hear the cause (*a*).—[1837, Order 14.]

Form of, for rehearing.

In any petition for rehearing any decree or order, not necessary to state the proceedings anterior to the decree or order appealed from, or sought to be reheard.—[1841, Aug. 26, Order 50.]

PETITIONS OF COURSE.

Upon any petitions of course (except petitions for setting down causes to be reheard) presented at the Rolls, one of the secretaries to draw up the orders at once in such form as the Master of the Rolls shall from time to time direct, and the under secretary to enter every such order in a book to be kept for the purpose, and mark it with his initials as entered; and suitors and their solicitors to have access to such book without the payment of any fee; and for the making every such order the same fees to be paid as heretofore

(a) The general effect of these Orders is given; but as the analysis of them could not be made perfect without going to an unprofitable length, the Orders themselves should be referred to whenever any question arises respecting them.—ED.

See also the Order of 11th Nov. 1841, Appendix, p. 374, *post*.

PETITIONS OF COURSE—continued.

were paid in respect of such petitions in lieu of the latter fees ; and 1s. to be paid to the chief secretary for filing, and 6d. to the under secretary for entering every such petition. And for every office copy of such orders 6d. to be paid to the chief secretary.—[1833, Order 29.]

PRELIMINARY ACCOUNTS *and Inquiries.*

In all cases in which it shall appear that certain preliminary accounts and inquiries must be taken and made before the rights and interests of the parties to the cause can be ascertained, or the questions therein arising can be determined, plaintiff may, at any time after defendants have *appeared*, move the Court on notice, that such inquiries and accounts shall be made and taken, and an order referring it to the Master to make such inquiries and take such accounts shall thereupon be made, without prejudice to any question in the cause, if it shall appear to the Court *that the same will be beneficial* to such (if any) parties to the cause as may not be competent to consent thereto, and that the same is consented to by such (if any) of the defendants as being competent to consent have not put in their answer to the bill, and that the same is consented to by, *or is proper*

PRELIMINARY ACCOUNTS—continued.

to be made upon the statements contained in the answers of such (if any) of the defendants as have answered the bill (a).—[1839, Order 5.]

PRODUCTION OF BOOKS AND PAPERS. See *tit. "MASTER,"* p. 77, *ante*.

PUBLICATION.

Not to be enlarged except upon special application supported by affidavit, and at the cost of the party applying, unless otherwise

(a) The Court will not direct preliminary inquiries to be made under this Order, unless it is plain that they would be directed at the hearing, and would be binding on the parties to the suit.—*Meinertzhagen v. Davis*, 10 Sim. 289; *Jaquet v. Edwards*, Leg. Ob. v. 22, p. 399. Nor will such inquiries be directed where the object of the motion is to effect what is actually intended to be decided upon the decree.—*Lee v. Shaw*, 4 Jur. 102.

But preliminary accounts will be ordered to be taken under this Order, if proper, though the cause has been set down for hearing.—*Strother v. Dutton*, 10 Sim. 288.

Whether preliminary accounts will be ordered where any of the defendants are out of the jurisdiction of the Court? Q.—*Jaquet v. Edwards*, *Meinertzhagen v. Davis*, *supra*.

The order may be obtained as well by petition as on motion.—*Hicks v. Shells*, 4 Jur. 858.

In a suit for specific performance, a reference may be obtained under this Order to inquire whether the plaintiff has shown a good title, and when first, without prejudice to the question of specific performance.—*Forlowe v. Amcoats*, 4 Jur. 1054.

PUBLICATION—continued.

ordered [1831, Order 18] (a); such application to be heard and determined by the Master in rotation, upon a warrant to be taken out before him, with a notice at the foot stating the object of the application, and *to be served two clear days* before the return thereof. Either party to be at liberty to appeal by motion from the order made on such application to the Lord Chancellor, Master of the Rolls, or Vice Chancellor, but the order on such appeal to be final. [3 & 4 Will. 4, c. 94, ss. 13 & 14, and Order 20, 1833] (b). But where commission issues pur-

(a) Under this Order publication may be enlarged on affidavit without notice.—*Brown v. Brown*, 1 Russ. & M. 77.

(b) A motion for leave to examine witnesses, and that publication may in the meantime be enlarged, after publication has actually passed, is not an application which comes within the meaning of the 3 & 4 Will. 4, c. 94, s. 13, but ought to be made to the Court in the first instance.—*Carr v. Appleyard*, 1 Keen, 725; S. C. 2 Myl. & Cr. 476.

The Master having been prevented by illness from attending at his office on the day appointed for hearing an application to enlarge publication: Held, that the application might be made to the Court.—*Boys v. Trapp*, 9 Sim. 218.

Before a defendant can *move* to enlarge publication, he must serve his co-defendants as well as the plaintiff with notice of the motion.—*Brydges v. Bramfill*, 9 Sim. 603. [This of course is after publication has passed.—Ed.]

An order having been obtained from the Master for enlarging publication till Michaelmas Term, the plaintiff paying the costs of the application, the plaintiff paid the costs, but did not draw up the

PUBLICATION—continued.

suant to the 16th or 17th Order of 1833, publication to stand enlarged until the commission is returnable (a).—[1831, Order 17.]

RECEIVER.

The Master, in acting upon the Order of the Court of the 23d April, 1796, to be at liberty, upon the appointment of a receiver, or at any time subsequent thereto, in the place

order. On the 30th of October the witnesses were brought to the examiner's office, and all but one examined, whose examination was completed on the 2nd of November. Notice of the names and examination of the witnesses was given on the 30th of October. The defendant moved to suppress the depositions on the grounds, 1st, that the order for enlarging publication not having been drawn up was abandoned; and 2ndly, that if it extended to, it did not include, the first day of Michaelmas Term; and that notice of examination on the 30th of October did not afford the defendant forty-eight hours for cross-examination before the time of passing publication, the 1st of November being a Sunday. The motion was refused with costs, the Vice Chancellor observing, that the fact of the order not having been drawn up was not any ground for holding it to be inoperative, and that the defendants having accepted the costs the order had been acted upon.—*White v. Rigg*, Law J. Rep. (N. S.) Chanc. v. 10, p. 112.

The costs of appearing in opposition to a motion to enlarge publication were refused, where it was plain to the adverse party that there was good reason for giving the indulgence asked.—*Harrison v. Corbold*, Cooper, P. C. 429.

(a) Under the 17th Order of 1831, a plaintiff, though he does not want a commission, is not at liberty to give a rule to pass publication until the expiration of three weeks from the service of the subpoena to rejoin.—*Flight v. Jones*, 7 Sim. 256.

RECEIVER—continued.

of annual periods for the delivery of the receiver's accounts and payment of his balances, to fix either longer or shorter periods at his discretion; and when such other periods are fixed by the Master, the regulations and principles of the said Order in all other respects to be applied to the said receiver.—[1828, Order, 63.]

In every order directing the appointment of a receiver of a landed estate, a direction to be inserted that such receiver shall manage as well as set and let, with the approbation of the Master; and in acting under such order it shall not be necessary that a petition be presented to the Court in the first instance; but the Master, *without special order*, shall receive any proposal for the management or letting of the estate from the parties interested, and make his report thereon, which report shall be submitted to the Court for confirmation in the same manner as was formerly done with respect to reports on such matters made upon special reference; and *until such report be confirmed*, it shall not give any authority to the receiver.—[Ibid. Order 64.]

REPLICATION. See *tit. "BILL, Dismissal of," ante*, p. 29.

REPORTS.

The Master may, upon the application of any party interested, make a separate report or reports, the costs of which to be in the discretion of the Court.—[1828, Order 70.] And if he make a separate report of debts and legacies, he may make such certificate as he thinks fit with respect to the state of the assets; and every person interested may thereupon apply to the Court as he shall be advised (*a*).—[Ibid. Order 71.]

Order *nisi* for confirming may be obtained on petition as well as by motion, and service upon clerk in court to be deemed good service.—[1828, Order 21.]

Of scandal or impertinence to be filed four days before the scandalous or impertinent matter be expunged, or the costs taxed, in order that the adverse party may have an opportunity to file exceptions to such report (*b*).—[1833, Order 22.]

(*a*) When the Master has omitted to report on one of the questions referred to him, it is irregular to present a petition praying a declaration upon that question; the right course is to except to the Master's report.—*Winter v. Innes*, 4 Myl. & Cr. 101.

(*b*) Exceptions may be taken to a report for scandal and impertinence at any time before the impertinent matter is actually expunged.—*Evans v. Owen*, 2 Myl. & K. 382.

On the argument of exceptions to the Master's report an objection as to the admissibility of evidence may prevail, although it does

REPORTS—continued.

No part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before the Master to be stated or recited in reports, but such state of facts, &c. to be identified, specified, and referred to, so as to inform the Court what state of facts, &c. was so brought in or used.—[1841, August 26, Order 48.]

REVIVOR. See *tit.* "BILL," p. 34, *ante.*

RULES to produce witnesses and pass publication.

To be given at the latest in the same term when commission returnable.—[1831, Order 17.]

SECURITIES.

As to deposit, purchase or transfer of, in the name of the accountant-general, see *tit.* "MONEY AND SECURITIES."

not form the subject of an exception.—*Hoare v. Johnstone*, 4 M. & Cr. 127.

A single exception taken to the Master's certificate allowing four interrogatories affirmed that "the Master ought not to have so certified, but ought to have disallowed such interrogatories:" Held, that in order to succeed on the exception, it must be shown that all the four interrogatories were improper.—*Cotham v. West*, 1 Beav. 380.

SERVICE.

Whenever a person, who is not a party, appears in any proceeding either before the Court or before the Master, service upon the solicitor in London by whom such party appears, whether such solicitor act as principal or agent, shall be deemed good service, except in matters of contempt requiring personal service(a).—[1828, Order 44].

No person to be allowed to appear or act either in person, by solicitor or counsel, or to take any proceedings whatever either as plaintiff, defendant, petitioner, respondent, party intervening or otherwise, until an entry of the name of his solicitor and his solicitor's agent, if there be one, or if he act in person his own name and address for service have been made in the Solicitors' Book at the Six Clerks' Office; but if such address be not within London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall, then all services upon such person, *not required to be made personally*, to be deemed sufficient if a copy of such writ, &c.

(a) This Order has been held to apply only to cases in which a person, not a party to a suit, appears and continues to have an interest in the suit. In other cases there must be a special application for substituted service on the solicitor, supported by an affidavit that he continues to be the solicitor.—*Jennings v. Devey*, 4 Jur. 858.

The respondents to a charity petition are parties to it, and therefore are not within this Order.—*In re Willoughby's Charity*, 6 Sim. 18.

. . .

SERVICE—continued.

be transmitted to him through the post to such address as aforesaid.—[1841, Order 5.](a)

As to service on solicitors, see *tit.* "SOLICITOR."

SOLICITOR.

To pay *personally* such costs as the Court shall award whenever upon the hearing of a cause or other matter, it shall appear that the same cannot proceed by reason of the solicitor not having attended personally, or by some proper person, or having omitted to deliver any paper necessary for the use of the Court, and which according to its practice ought to have been delivered (b).—[1828, Order 36.]

For plaintiff to certify to the registrar, if any cause set down to be heard before the Lord Chancellor is afterwards set down to be

(a) By an order dated the 19th of November, 1841, the operation of this order is suspended till the first day of Easter term, 1842.

(b) If the solicitor of a party, merely through ignorance or mistake, has neglected to comply with the exigency of an order, the Court will not relieve the client upon terms from the consequences of the neglect without the consent of the other party.—*Walmsley v. Froud*, 1 Russ. & M. 334.

But wherever a party is made liable to costs through the gross negligence or misbehaviour of his solicitor, the Court will order the solicitor to indemnify him.—*Fawkes v. Pratt*, 1 P. Wms. 593; *Cook v. Broomhead*, 16 Ves. 133; *Wright v. Castle*, 3 Mer. 12; *Wilson v. Wilson*, 1 Jac. & W. 457; *Brassington v. Brassington*, 1 S. & S. 455.

SOLICITOR—continued.

heard before the Master of the Rolls, and *vice versa*, and to be allowed a fee of 6s. 8d., if he certify within eight days after the cause is so set down a second time.—[1828, Order 38.] And to certify in like manner where any cause has become abated or been compromised, and be allowed the same fee if the certificate be made as soon as the fact come to his knowledge.—[Ibid. Order 39].

Service upon the solicitor in London, by whom a party appears, to be deemed good service whenever a person *not a party* appears in any proceeding, and whether such solicitor acts as principal or agent, except in matters of contempt requiring personal service.—[Ibid. 44.]

An alphabetical book, to be called the Solicitors' Book, to be publicly kept at the office of the Six Clerks, and to be inspected without fee.—[1841, Aug. 26th, Order 1.](a) And every solicitor before he practise in his own name solely, and not by an agent whose name shall be duly entered as after mentioned, and every solicitor before he practise as such agent, to cause to be entered in the Solicitors' Book, in alphabetical order, his name and

(a) By an order of the 19th of November, 1841, it is ordered, that the first five orders of August, 1841, shall not take effect till the 1st day of Easter term, 1842. See Appendix, p. 380, *post*,

SOLICITOR—continued.

place of business, or some other proper place in London, Westminster or the borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with writs, notices, orders, warrants and other documents, proceedings and *written communications* in causes and matters depending in the Court, and a like entry to be made as often as he shall change his place of business, or the place where he may be served as aforesaid; and the above-mentioned entries to be made in such book by the six clerks, who shall be entitled to a fee of 1s. for every such entry.—[1841, Order 2.](a)

All such writs, notices, &c. as do not require personal service to be deemed sufficiently served, if such document, *or a copy thereof*, as the case may be, shall be left at the place lastly entered in the Solicitors' Book; and if any solicitor neglect to cause such entry to be made, then the fixing up a copy of any such writ, notice, &c. for such solicitor in the Six Clerks' Office to be deemed a sufficient service on him, unless the Court under special circumstances direct otherwise.—[Ibid. Or. 3.](a)

If any solicitor give his consent in writing that the service of all or any such writs, notices, &c. may be made upon him through the post office or otherwise, such service to be

(a) See note (a), p. 103.

SOLICITOR—continued.

deemed sufficient if made in the manner consented to ; but such solicitor may revoke such consent at any time *in writing*.—[1841, Order 4.](a)

No person to be allowed to appear or act either in person, or by solicitor, or counsel, or to take any proceedings either as plaintiff, defendant, petitioner, respondent, party intervening or otherwise, until an entry of the name of his solicitor, and his solicitor's agent, if there be one, or, if he act in person, his own name and address for service shall have been made in the Solicitors' Book ; but if such address of any person so acting in person be not within London, Westminster or the borough of Southwark, or within two miles of Lincoln's Inn Hall, then service (not required to be made personally) through the post to be deemed sufficient.—[Ibid. Order 5.](a)

STOP ORDERS.

Where any funds shall be standing in the name of the accountant-general to the credit of any cause, or to the account of any class or classes of persons, and an order shall be made to prevent the transfer or payment of such stocks, or funds, or any part thereof, without notice to the assignee of any person or persons entitled in expectancy or otherwise

(a) See note (a), p. 103.

STOP ORDERS—continued.

to any share or portion of such stocks, or funds, the person or persons by whom any such order shall be obtained, or the share of such stocks or funds affected by such order, to be liable, at the discretion of the Court, to pay any costs, charges and expenses, which, by reason of such order being obtained, shall be occasioned to any party to the cause, or any person interested in such stocks or funds. And any person presenting a petition for any such order, not to be required to serve such petition *upon the parties to the cause, or upon the persons interested in the parts of the stocks or funds, not sought to be affected* by any such order(a).—[1841, April 3, Order 1.]

SUBPŒNA.

To be prepared by the solicitor of the party requiring the same, and to be in the form mentioned at the foot of the orders. See *Appendix, post.*—[1833, Dec. 21st, Order 1.]

Præcipe for, to be delivered and filed at the subpœna office, and the name, or firm, and place of business, or residence, of the solicitor or solicitors issuing the subpœna to be indorsed thereon, and where such solicitors

(a) The stop order, as now drawn up by the registrars, is prefaced with a submission on the part of the assignee to be bound by the above order.—ED.

SUBPÆNA—continued.

be agents only, the name or firm, and place of business or residence, of the principal solicitor or solicitors (*a*).—[1833, Orders 2 and 3.]

To contain three names where required (except a *subpœna duces tecum*) and a fee of 5*s.* 10*d.* to be allowed in costs for issuing, and solicitor to be allowed also 6*s.* 8*d.* for præcipes and attendance on sealing, where the number of names included shall not exceed nine, and if they exceed nine, then an additional fee of 6*s.* 8*d.*; and if they exceed eighteen, a further fee of 6*s.* 8*d.*; and so in proportion for every additional number of nine names.—[Ibid. Order 5.]

To contain a memorandum at the foot in the form specified in this order. See "ORDER."—[1841, Aug. 26, Order 14.]

Service of:

To be effected by delivering a copy and of the indorsement, and at the same time producing the original writ; and in all cases where subpœna might heretofore have been served by leaving the body thereof at the party's dwell-

(a) A *subpœna* indorsed "G. M. Grey for Dolbinson," without any place of residence, was set aside, together with an attachment issued thereon, although the defendant admitted the receipt of a copy so indorsed.—*Barnes v. Tweddell*, 2 Jur. 805.

SUBPŒNA, *Service of*—continued.

ling house, or otherwise than personally, sufficient to leave a copy in the same manner, producing the original writ (a).—[1833, Dec. Order 4.]

As to the service of, on persons out of the jurisdiction, or evading the service, under

(a) Where a defendant, who was a peeress of Scotland, and a Scotchwoman, left her servants in charge of her house in London, (of which she was a yearly tenant) with some of her furniture, and went to her family seat in Scotland three months before the filing of the bill, intending to return to England in six months, it was held that service of the subpœna to appear at the town house, and subsequent personal service in Scotland of the order nisi for sequestration, were good.—*Davidson v. The Marchioness of Hastings*, 2 Jur. 756.

In *Bickford v. Skewes*, 9 Sim. 428, it was held that an affidavit of service of a subpœna to appear, stating that the deponent served the defendant by leaving a true copy of the subpœna and the indorsement with A., the wife of S., the sister of the defendant, at whose house the defendant lodged, is insufficient, as it does not show where the writ was served.

Service of a subpœna by leaving a copy at the defendant's residence sealed up in a letter, at the same time producing the original, held regular.—*The Earl of Chesterfield v. Bond*, 2 Beav. 263.

Where some of the defendants were residing out of the jurisdiction and had not appeared nor been served with subpœna, the Court allowed the plaintiff to exhibit interrogatories to prove that these defendants were out of the jurisdiction.—*Willats v. Busby*, Law Journ. Rep. (N. S.) Chanc. v. 10, p. 1.

Service of subpœna on some partners, defendants, ordered to be deemed good service upon other partners, defendants, who could not be found.—*Snow v. Hole*, Ibid. p. 178.

SUBPŒNA, *Service of*—continued.

2 & 3 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82,
see pp. 111 to 114, post.

The time for serving (except subpœna for costs) to be limited to the last day of the term next following the term or vacation in which it was sued out; and in the interval between the suing out and service of any subpœna, the party suing out the same to be at liberty to correct any error in the names of parties or witnesses, and to have the writ re-sealed on payment of 1s. and at the same time leaving a corrected præcipe of such subpœna, marked "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.—[1833, Order 7.]

Service on clerk in court of subpœna to rejoin, or to answer an amended bill, or to hear judgment, to be deemed good service.—[1828, Order 20.]

For Costs :

The certificate, or report, to be produced to the sealing officer.—[1833, Dec. Order 2.]

Duces Tecum.

No more than three persons to be included in, and the party suing out the same to be at liberty to sue out a subpœna for each person, if deemed necessary or desirable; and 12s. 6d.

SUBPŒNA *Duces Tecum*—continued.

to be allowed in costs for every such subpœna, including præcipe, attendance, and sum paid for sealing.—[1833, Dec. Orders 5 and 6.]

To rejoin:

To be served by plaintiff within three weeks after replication where he files replication, without having been served with a notice of motion to dismiss bill for want of prosecution, *in case he requires a commission to examine witnesses* (a).—[1831, Order 17.]

(a) This order only applies to cases in which the plaintiff requires a commission.—*Smith v. Oliver*, 3 Myl. & Cr. 165; *Crooke v. Trery*, *ibid.* 368. So that even where a plaintiff has given the undertaking to speed, mentioned in the 16th amended Order of 1831, he need not serve a subpœna to rejoin, unless he requires a commission.—*Daniell v. Austen*, 8 Sim. 19.

The form of the order to speed is as follows: "It is ordered that the plaintiff do file a replication, serve subpœnas to rejoin, and obtain and serve an order for a commission to examine witnesses if he require such commission, within three weeks from this time, and give rules to produce witnesses and pass publication in ——— term, and set the cause down for hearing, and serve subpœnas to hear judgment in ——— term, or in default thereof, that the plaintiff's bill do stand dismissed out of this Court with costs."

In *Burgess v. Thompson*, 2 Keen, 762, the plaintiff undertook to speed, and the terms were, that he should set the cause down for hearing, and serve a subpœna to hear judgment in Easter term; he served the subpœna, and set down the cause to be heard in Easter term; but the subpœna to hear judgment was returnable in Trinity term, and it was held that this was not a compliance with the undertaking.

SUBPŒNA—continued.

To hear judgment :

To be returnable in the succeeding term, after rules to produce and pass publication given, [1831, Order 17,] and may be served and made returnable as well out of term as in term (a).—[Ibid. Order 82.]

Service of subpœnas on persons out of the jurisdiction, &c. under 2 & 3 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82.

The Court may, upon *special motion* of the plaintiff or plaintiffs in any suit concerning lands, tenements, and hereditaments in England, or Wales, or concerning any charge, lien, judgment, or incumbrance thereon, or any money vested in any government or other public stock, or public shares in public companies, or concerns, or concerning the dividends or produce thereof, order that service in any part of the United Kingdom, and in the Isle of Man, or elsewhere, out of the jurisdiction, of any subpœna, or letter missive, and of all subsequent process to be had thereon, upon a defendant who shall appear *by affidavit* to be residing where he shall be so served, be

(a) The affidavit of service of subpœna to hear judgment, produced by a defendant when the plaintiff makes default at the hearing, must verify the fact of the subpœna bearing the indorsement required by the third Order of Dec, 1833.—*Rigg v. Wall*, 3 Myl. & Cr. 505.

SUBPŒNA, *Service of, &c.*—continued.

deemed good service of, or be made on, such defendant upon such terms and in such manner, and at such times as to the Court shall seem reasonable; and may also on motion in open Court of any of the plaintiffs, in any such suit founded on affidavit, and such documents as may be applicable for ascertaining the residence of the party, and the particulars material to identify such party and his residence, and also specifying the means whereby such service may be authenticated, and especially wherever there are any British officers, civil or military, appointed by or serving under her Majesty, residing at or near such place, order that service of subpœna to appear and answer upon the party in the manner thereby directed, or, in case where the Court shall deem fit, upon the receiver, steward, or other person receiving or remitting the rents of the lands or premises, if any, in the suit, returnable at such time as the Court shall direct, shall be deemed good service of such party, and afterwards upon an affidavit of such service had, may order an appearance to be entered for such party in such manner and at such time as the Court shall direct; and thereupon the Court shall proceed as effectively as if such service had been made within the jurisdiction (2 & 3 Will. 4, c. 33,

SUBPÆNA, *Service of, &c.*—continued.

s. 1, and 4 & 5 Will. 4, c. 82, s. 1) (a). But along with such *subpæna* or *letter missive*, a copy of the prayer of the bill must also be served, and no process of contempt to be entered, nor any decree made absolute without an order of the Court on *special application*. (2 & 3 Will. 4, c. 33, s. 3.) And where the Court is satisfied *upon affidavit* that any such defendant cannot by reasonable diligence be personally served with the *subpæna* to appear and answer, or that upon inquiry at his usual place of abode he cannot be found so as to be served with such process, and that there is just ground for believing that such defendant *secretes or withdraws himself so as to avoid being served*, the Court may order that service of the *subpæna* shall be substituted in such manner as the Court shall think reasonable. (4 & 5 Will. 4, c. 82, s. 2.)

(a) Service abroad of a *subpæna* to appear, ordered under the act in a case where English funds were alleged to have been improperly sold out and invested in Austrian stock, and in Dutch and Portuguese bonds.

The defendant having made default in entering his appearance, and the service of the *subpæna* and order having been properly authenticated, the Court under this act ordered an appearance to be entered by the six clerk.—*Dodd v. Webber*, 2 Beav. 502.

An order for service of *subpæna* to appear and answer upon the defendant's partners at the house of business, the defendant himself being abroad, held, under the circumstances, to be regular.—*Kinder v. Forbes*, 2 Beav. 503.

SUBPŒNA, *Service of, &c.*—continued.

By the 2nd section of the 2 & 3 Will. 4, c. 33, similar powers are given to the Courts of Chancery and Exchequer in Ireland, which are extended by the 4 & 5 Will. 4, c. 82, in the manner above mentioned (a).

SUPPLEMENTAL BILL:

As to statements in, see *tit.* "BILL of Revivor and Supplement."

VACATION.

The time which occurs between the last seal after Trinity Term and the first seal before Michaelmas Term, and between the last seal after Michaelmas Term and the first seal before Hilary Term, not to be reckoned in the computation of time allowed for *amend-*

(a) It will be seen that the provisions contained in these acts are applicable to four cases; 1st, to the case of *personal service* on a defendant resident out of the jurisdiction; 2nd, of service in such manner as the Court shall direct upon a party so resident; 3rd, of service on the defendant's steward or receiver; and 4th, of service on a defendant secreting or withdrawing himself to avoid being served.

Where a defendant has been served with a subpoena under the above acts, personal notice must be given to him before any subsequent process is applied for.—*Hasluck v. Stewart*, 6 Sim. 321.

In *M'Master v. Lomax*, 2 Myl. & K. 32, Lord Brougham (Chancellor) expressed an opinion that these acts did not apply to Scotland; but Lord Lyndhurst (Chancellor) expressed a contrary opinion in *Cameron v. Cameron*, 2 Myl. & K. 289, as did also the Vice Chancellor in *Parker v. Lloyd*, 5 Sim. 508.

VACATION—continued.

ing any bill, for filing, delivering, or referring exceptions to any answer, or for obtaining a Master's report upon any exceptions.—
[1831, Order 19.]

WARRANT:

To be peremptory, and the Master may continue the attendance beyond the hour, and during such time as he thinks proper, and increase the fee for the solicitor's attendance in proportion to the time actually occupied, and may also disallow the usual fee, if not attended by the solicitor, or a competent person on his behalf; the increased or disallowed fee being marked in his attendance-book, and also on the warrant.—[1828, Order 59.]

For preparing report not to be issued without Master's previously requiring parties to show cause why it should not issue.—[Ibid. Order 67.]

To review any proceeding in Master's office not to be taken out, except by permission of the Master, upon *special grounds* to be shown to him for that purpose, and the costs of such review, when allowed, to be in Master's discretion.—[Ibid. Order 68.].

WITNESS:

To be examined before either of the exa-

WITNESS—continued.

miners not to be produced at the seat of clerk in court; but a notice in writing, containing the name and description of, to be served there.—[1828, Order 25.]

Cross-examination of, may be taken by the examiner who takes examination in chief.—[Ibid. Order 26.]

May be examined by the Master *vivâ voce*; and in such case the subpoena for the attendance of the witness to be issued from the subpoena office on a note from the Master, and the evidence to be taken down by the Master or his clerk in his presence, and preserved in the Master's office to be used in Court if necessary (a).—[Ibid. Order 69.]

Oaths to be administered to, by the examiners, and depositions of, to be taken in the first person (b). (3 & 4 Will. 4, c. 94, s. 27.)

WRITS OF FIERI FACIAS, VENDITIONI EXPONAS AND ELEGIT.

Every person to whom any sum of money or costs have been ordered to be paid, may, after the lapse of one month from the time

(a) The discretion given to the Master by this Order to examine witnesses *vivâ voce* cannot be exercised after issuing the warrant on preparing his report.—*Trotter v. Trotter*, 5 Sim. 383.

(b) This refers only to depositions taken before the examiners.—*Dryden v. Frost*, 8 Sim. 380.

WRITS OF FI. FA. &c.—continued.

when such order was duly passed and entered, sue out a *feri facias* or *elegit* of the form after stated; see *Appendix, post.*—[1839, May 10th, Order 1.] But the date of the entry of such order must be marked thereon by the entering clerk, otherwise the *fi fa.* or *elegit* cannot be issued.—[*Ibid.* Order 2.]

Such writs when sealed to be delivered to the sheriff or other officer to whom the execution of the like writs at common law belongs, and to be executed in like manner, *and for the same fees*, and when returned by such sheriff or other officer, to be delivered to the clerks in court, by whom they were sued out and left at their seats, and filed in the Six Clerks' Office. — [*Ibid.* Order 3.]

If upon the return of any such *fi. fa.* it shall appear that the sheriff or other officer hath by virtue of such writ seized, but not sold, any goods of the person ordered to pay such sum of money or costs as aforesaid, the person to whom such sum of money or costs is payable may immediately after such writ with such return is filed, sue out, by his clerk in court, a *venditioni exponas* in the form after stated. See *Appendix, post.*—[*Ibid.* Order 4.]

On every such *fi. fa.* and *elegit* the words "by the Court" to be indorsed, and also

WRITS OF FI. FA. &c.—continued.

thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence or place of business of the solicitor at whose instance the same shall be issued, and the name of the clerk in Court issuing the same, together with the sum to be levied, according to the form used upon the like writs at common law.—[1839, Order 5.] The clerk in court to be allowed for issuing every *fi. fa.* or *venditioni exponas* a fee of 18s. 7d., and for every *elegit* 1l. 10s., and the solicitor a fee of 6s. 8d. for instructions for each of the said writs; and also a further fee of 6s. 8d. for attending to procure a warrant and instructing the officer.—[Ibid. Order 6.]

AS TO THE GENERAL CONSTRUCTION
OF THE ORDERS.

—♦—

HAVING now completed the analysis of the several Orders referred to in the foregoing pages, it may not be unprofitable to offer a few remarks as to the mode in which they have been generally construed.

The decisions respecting the power of the Masters to dispense with a strict obedience to the Orders where they may deem it expedient, appear to be somewhat conflicting, although there is little doubt the same principles of construction were intended to be recognized in each of those decisions. In *Milltown v. Stewart*(a), where more than six weeks had elapsed after the last of the answers was to be deemed sufficient, a special application for leave to amend was refused by the Master under the 3 & 4 Will. 4, c. 94, s. 13, on the ground that he had no jurisdiction; but on the application being renewed before the Vice Chancellor, his Honour said that the Master had misapprehended the meaning of the act, which was

(a) Cooper, P. C. 404.

to substitute the Master for the Court; and that as the Court could dispense with the Order when circumstances rendered it proper, the Master could also. So in *Ord v. Lyon*(a), where a motion was made to discharge an order made by the Master giving the plaintiff leave to amend his bill, when more than six weeks had elapsed after the answer had become sufficient, upon the ground that the Master's authority was gone, the motion was refused. And in *Millbank v. Stevens*(b) the Vice-Chancellor said that he had the authority of the Lord Chancellor for stating that the Masters, on applications made before them under the act (3 & 4 Will. 4, c. 94), had the same power to dispense with the strict letter of the General Orders of the Court as the Court itself had. Yet in *Carr v. Appleyard*(c) the Court discharged an order made by the Master for enlarging publication *after it had passed*, on the ground that the Master had no jurisdiction in cases where publication had actually passed: and in *Smith v. Webster*(d) it was determined that the Master had no power to dispense with, or relax, the General Orders of the Court.

The proper distinction with reference to this question appears, it is submitted, to have been taken by the Vice-Chancellor in *Ord v. Lyon*, be-

(a) V. C. June, 1838, Cooper, P.C. 405. (c) 2 Myl. & Cr. 476.

(b) 8 Sim. 160.

(d) 3 Myl. & Cr. 244.

fore referred to, in which case his Honor said, "the case of *Smith v. Webster* has no application to the question what is the jurisdiction the Master exercises *under the statute*. In general the Master must adhere to the orders of the Court, as laid down for the regulation of the practice. He has no discretion where the jurisdiction is conferred by the Court, but must follow its directions. But the act for regulating the proceedings and practice of the Court has given him different and higher powers. In the matters mentioned in the 13th section, in applications for time to answer, for leave to amend a bill, and for enlarging publication, the Master has the jurisdiction in the first instance; the jurisdiction is taken from the Court and given to the Master; and what the Court could have done, the Master can now. In cases not arising out of the act it is different; there the Master cannot relax the orders of the Court:" and thus it may be concluded, that where the application is *directly in pursuance of the statute*, the Master has the same power of interpreting its meaning as the Court itself would have; but where the application is *under an order of the Court*, the Master has no authority to depart from the strict letter of the order. Such a construction is also consistent with another recent case which has not been adverted to, viz. that of *Furnival v. Swann*, decided by the Master of the Rolls (a). In that case, after

(a) M. R. April, 1838, Cooper, P. C. 405.

a demurrer set down for argument had been submitted to, application was made to the Court for leave to amend the bill, which was granted, the plaintiff undertaking to amend within three weeks, and paying 20s. costs of the amendment and the costs of the demurrer. Before the three weeks had expired the plaintiff obtained from the Master an order giving him further time to amend. This was discharged as irregular, *the plaintiff having entered into an undertaking with the Court*, and the Master having no jurisdiction to interfere and enlarge the time fixed by the Court.

That the Court itself has the power of relaxing its general orders, seems to be indisputable. In a recent case before the Vice-Chancellor (a), his Honor observed, that the orders of the Court were to be considered as laying down general rules, but not as being so imperative that they could under no circumstances be departed from; and the same opinion was expressed by Lord Chancellor Cottenham in *Smith v. Webster* (b), and by the Master of the Rolls in *Carr v. Appleyard* (c). Lord Plunkett also, in speaking of the new Chancery Orders in Ireland, observed, that there was no ground for saying, nor could it be pretended, that those rules, the creatures of the Court, were to become its

(a) *Burrell v. Nicholson*, 6 Sim. 212.

(b) 3 Myl. & Cr. 244.

(c) 2 Myl. & Cr. 476.

masters, by assuming a nature so binding as to overrule and control the acts of that very Court which gave them existence (a).

Although, however, the general principle of relaxation is admitted, where circumstances call for its exercise, few cases have hitherto been decided that define practically the extent to which it would be permitted to operate. Sir Wm. M'Mahon, the Master of the Rolls in Ireland, with reference to the Irish new Chancery Orders, said, that his view of the system of Orders of the 29th November, 1834, which were issued under the statute 4 & 5 Will. 4, c. 78, for the amendment of the proceedings and practice of the High Court of Chancery in Ireland, was, that they were to be considered as Orders, while unrescinded, of the same nature as Orders in a statute, as for example, as the rules inserted in the statute 5 & 6 Will. 4, c. 16, as to persons in custody under process (the Irish Equity Contempt and *pro confesso* Act); that all those Orders were to be considered as the written and binding law of the Court, unless where upon the acknowledged principles of a Court of Equity they ought to be relieved against, viz. *in cases of fraud, or accident* (b). But there is, it is humbly submitted, another mode of construing the orders which will admit of still greater latitude in favour of the honest suitor than would be accorded to him

(a) *Re Lyons*, 1 Drury & Walsh, 327.

(b) *Stewart v. Service*, 1 Lloyd & G. temp. Plunkett, 303.

by the two exceptions allowed by Sir Wm. M'Mahon, and will still exact a rigid interpretation where necessary for the prevention of delay and chicanery. Certain of the Orders were framed for affording facilities to suitors in the management of the various proceedings required to be taken during the progress of a cause, and these, being in the nature of remedial statutes, are to be construed liberally; while the object of others is to impose a penalty on those who should by neglect, or improper delay, prevent, or retard, the due administration of justice, and these, although in the nature of penal statutes and to be construed strictly, are to be literally enforced. Indeed, the same order will sometimes admit of the twofold construction just alluded to, when it is applicable to different cases; thus, in the cases of applications for amendment of bills after the time allowed has expired, if upon any such application the cause of the delay can be satisfactorily accounted for, and the amendment is of importance for determining the rights of the parties to the cause, an order will be granted, but if the application has become necessary through negligence, or inadvertence, the strict letter of the order will be enforced.—*Rees v. Edwards*, 1 K. 465; *King of Spain v. Hullett*, 1 Russ. & M. 7; *Traile v. Bull*, 1 Beav. 475. The case of *Russell v. Dight*, 6 Sim. 430, affords a further illustration of this view, for in that case the Vice-Chancellor held a fourth answer to be irregularly filed after the first and

second answers had been successively reported insufficient, when the Master was about to report the third answer insufficient also, His Honor observing, that, although in a common case a defendant was at liberty to put in an answer as soon as he had an intimation of the Master's opinion, that his answer was insufficient, yet he was not at liberty to do so in a case where the plaintiff might derive some benefit by the judgment of the Master; and that some advantage having accrued to the plaintiff under the 10th Order (of 1828), by the report that the third answer was insufficient, the Court could not deprive him of it.

Computation of Time.—The general rule, with respect to all the Orders as to time, is, that one day is to be included and the other excluded in the computation; and if the last of any specified number of days happens on a Sunday, the Sunday is not to be reckoned.—*Angell v. Wescombe*(a), *Milburn v. Lyster*(b).

When time is to be computed by the month, it is in actual practice construed lunar month.—*Attorney-General v. Newberry*(c).

Service of Order.—When the General Orders use a term which embraces no more than the obtaining the Order, service is also directed; but when

(a) 1 Myl. & Cr. 48.
(c) Cooper, P. C. 467.

(b) 5 Sim. 565.

a term is used which embraces using as well as obtaining the Order, it is not necessary to express the necessity of service.—*Taylor v. Harrison* (a).

Default of Solicitor.—The Court will not, *without consent*, relieve a party who has failed to comply with the exigency of an Order, through the ignorance, or mistake, of his solicitor.—*Walmesley v. Froud* (b).

(a) 1 Myl. & Cr. 274.

(b) 1 Russ. & Myl. 334.

CHAPTER II.

The Acts of 11 Geo. 4 & 1 Will. 4, c. 36, and 2 Will. 4, c. 58, relating to Commitments by Courts of Equity for Contempts, and taking Bills pro confesso; and the 2 & 3 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, relating to the Service of Process from the Courts of Chancery and Exchequer on persons out of the jurisdiction or evading the service of such process.

As to the 11 Geo. 4 & 1 Will. 4. c. 36, intituled "An Act for altering and amending the Law regarding Commitments by Courts of Equity for Contempts and taking Bills *pro confesso*."

The effect of this statute is, as the title modestly intimates, to amend the law regarding commitments by courts of equity for contempts and taking bills *pro confesso*; but various important objects, which can scarcely be understood, and cannot be properly appreciated, without an attentive perusal of its several provisions, have been accomplished by it. Of these not the least worthy of attention are, first, the benefits conferred upon poor and ignorant de-

5 Geo. 2,
c. 25, s. 1.

If defendant depart the realm or abscond to avoid being served with process, an order may be obtained directing him to appear within a certain time, and on his neglecting to do so, the bill to be taken *pro confesso*.

that if in any suit which hath been or hereafter shall be commenced in any court of equity, any defendant against whom any subpoena or other process shall issue shall not cause his appearance to be entered within the time and in the manner prescribed by the rules of the Court in case such process had been duly served, and an affidavit or affidavits be made to the satisfaction of the Court that such defendant is beyond the seas, or that upon inquiry at his usual place of abode he could not be found so as to be served with such process, and that there is just ground to believe he is gone out of the realm, or otherwise absconded, to avoid being served with such process, an order may be obtained directing and appointing such defendant to appear at a certain day therein to be named, and a copy of such order, within fourteen days after it shall be made, shall be inserted in the London Gazette, and published on some Lord's day immediately after divine service in the parish church(a) of the parish where such defendant made his usual abode within thirty days next before such his absenting; and also posted up

(a) In a case where the parish church being under repair the plaintiff could not comply with this part of the direction of the act, he was permitted, on the repairs of the church being completed, to move that the defendant might be ordered to appear to the bill on or before a certain day named in the order.—*Knowles v. Broom*, 1 Ves. & B. 306.

in some public place at the Royal Exchange, London, if made in the Courts of Chancery, or Exchequer, or the Duchy Chamber of Lancaster at Westminster, and if made in any of the courts of equity of the counties palatine of Chester, Lancaster and Durham, or of the great sessions in Wales, then at some public place at some market town within the jurisdiction of the Court by which such order was made, and nearest to the defendant's usual place of abode, such place of abode being also within the jurisdiction; and if the defendant do not appear within the time limited by such order, or within such further time as the Court shall appoint, then, on proof of the publication of such order, the Court may order the bill to be taken *pro confesso*, and make such decree thereupon, and issue such process by sequestration or otherwise for compelling the performance of such decree as may be requisite, and may likewise order the plaintiff's demands to be satisfied out of the property sequestered, the plaintiff first giving sufficient security to abide such order touching the restitution of such property as the Court may think proper to make concerning the same, upon the defendant's appearance to defend such suit, and paying such costs to the plaintiff as the Court shall order. But in case such security be not given, then the property sequestered to remain under the direction

Defendant's property to be sequestered, and plaintiff's demand satisfied on his giving security for restitution if defendant should appear.

of the Court, either by appointing a receiver thereof or otherwise, as to the Court shall seem meet, until the appearance of the defendant and his payment of the plaintiff's costs, or until the further order of the Court(a).

(a) An affidavit that the deponent had used all due diligence to discover where the defendant resided, or where her last place of residence was, but without success, save that he had been informed and believed that she had assumed male attire in order to disguise herself, and that she was occasionally seen in the neighbourhood of a certain place, is sufficient to warrant the Court to make an order under this act, with a view to the taking the bill *pro confesso*.—*Graver v. Temple*, 9 Sim. 523.

In *Lovell v. Hicks*, 1 Y. & C. 230, an order which had been obtained for taking the bill *pro confesso* was discharged, and the defendant was allowed to put in an answer to the plaintiff's amended bill upon terms, it appearing that he had put in a joint answer to the original bill, to which exceptions had been taken, but waved by the plaintiff amending his bill, and that previous to the filing of the amended bill the defendant had gone to America, and there remained till shortly before the application. The cause had also abated by the death of a defendant, so that no additional delay would be occasioned.

In *Grant v. Hibbert*, 8 Sim. 329, an order was made under this section, directing a defendant who had absconded to appear to the bill. The defendant's only residence in England was at an hotel, where he remained two days, and then sailed for Jamaica. Held, that the order ought to be published in the church of the parish in which the hotel was situated, that being the parish where the defendant made his usual abode within thirty days next before his absenting.

Where a bill is ordered to be taken *pro confesso*, the decree may be made subsequently, although it is usually taken at the same time. *Woollams v. Baker*, 6 Sim. 316.

S. 4. Parties in custody to be served with a copy of the decree before any process be taken out to compel the performance thereof.

Parties in custody to be served with copy of decree.
5 G. 2, c. 25, s. 2.

The following shows the course of proceeding for taking a bill *pro confesso* where the defendant absconds.

In *Baker v. Keen*, 4 Sim. 493, the bill was filed on the 29th of October, 1832. On the 24th January, 1833, Mr. Simons, for the plaintiffs, obtained an order on motion, supported by affidavit, that the defendant had absconded and gone beyond the seas, that the defendant should appear to the bill on or before the 1st of March then next. On the 7th of March, 1833, it appearing by production of the London Gazette and by affidavit, that the directions of the act had been complied with, but that the defendant had not appeared, an order was made on motion that the plaintiff's clerk in court should attend at the hearing of the cause with the record of the bill, in order to have the same taken *pro confesso*. The cause having been set down for hearing, it was ordered, on motion, on the 23d March, 1833, to be placed at the head of the paper of causes for the 27th of that month, and that the plaintiff's clerk in court should then attend with the record. Accordingly on that day the clerk in court attended, and a decree *pro confesso* was taken.

As to the course of proceeding for taking a bill *pro confesso* against a corporation, see *Brickwood v. Harvey*, 8 Sim. 201.

In a case where the attorney-general had not put in his answer within a reasonable time, the Court ordered that he should put in his answer within a week after service of the order, or that the bill should be taken *pro confesso* against him.—*Groom v. Attorney-General and others*, 9 Sim. 324.

An insufficient answer will not prevent a bill being taken *pro confesso*.—*Turner v. Turner*, 1 Dick. 316.

So if a bill be amended after answer, and no answer be put in to the amended bill, the plaintiff is entitled to a decree *pro confesso*.—*Jopling v. Stuart*, 4 Ves. 619.

Defendant
returning
within seven
years after
decree to be
served with
copy of it ;
and in case of
his death, his
heir or exe-
cutor to be
served.
5 G. 2, c. 25,
s. 4.

S. 5. If any person, being out of the realm, or absconding at the time of such decree being pronounced, shall within seven years after the making such decree, return, or become publicly visible, then he shall be served with a copy of such decree within a reasonable time ; and in case he shall die within the seven years before his return, or appearing openly, or shall die in custody within such period before being served with a copy of such decree, then his heir or executor, according to the nature of the property sequestered, or if such heir be a *feme covert*, *infant*, or *non compos mentis*, then the husband, guardian, or committee of such heir shall be served with a copy of such decree within a reasonable time after the death of the defendant and who is his heir, executor or administrator, shall be known to the plaintiff.

Decree to
stand abso-
lutely con-
firmed, if no
petition for
rehearing
within six
months after
service of it.
5 Geo. 2,
c. 25, s. 5.
Defendant
petitioning
for rehearing,
and paying
costs, to be ad-
mitted to an-
swer and
defend as if
no decree ;
5 Geo. 2,
c. 25, s. 6.

S. 6. Persons not petitioning for a rehearing within six months after being served with a copy of such a decree, the same to stand absolutely confirmed.

S. 7. But if any person so served shall within six months after such service, or not being so served shall within seven years next after the making of such decree, petition for a rehearing and pay, or give security for payment of such costs as the Court shall think reason-

able, then he, or his representatives, or any person claiming under him, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill, and the cause will proceed to a hearing in the same manner as if no decree had been made.

S. 8. And if he, his heirs, executors, or administrators, shall not petition within seven years, such decree to stand absolutely confirmed, and the Court may make such further order as shall be just.

If no petition within seven years, decree to stand absolutely confirmed.
5 Geo. 2, c. 25, s. 7.

S. 9. But persons beyond the seas not to be affected, unless it shall appear to the satisfaction of the Court, by affidavit, that such persons had been in England within two years next before the subpœna in such suit issued against such persons.

Persons beyond seas not to be affected, unless in England within two years before subpœna issued.
5 Geo. 2, c. 25, s. 8.

S. 10. And the before abstracted provisions not to extend to make good any proceedings against any person in any Court of Equity having a limited jurisdiction, unless it shall appear to the satisfaction of such Court, on affidavit, that such person had resided within the jurisdiction of the Court within one year next before such subpœna issued.

Not to extend to Courts of Equity, having limited jurisdiction, unless &c.
5 Geo. 2, c. 25, s. 9.

S. 11. If any defendant, by virtue of any

Defendant refusing to

appear when brought into Court by *habeas corpus*, or being in contempt, Court may appoint clerk in Court, &c. to enter appearance, and proceed in the cause. 5 Geo. 2, c. 25, s. 2.

writ of *habeas corpus*, or other process, issuing out of any Court of Equity, be brought into Court, and refuse, or neglect, or being in prison under an attachment, or other process of contempt, shall, after fourteen days' notice in writing requiring him to enter an appearance, refuse, or neglect, to enter his appearance, or to appoint a clerk in Court, or attorney of such Court, to act on his behalf, then such Court may appoint a clerk in Court, &c. and such proceedings may be had in the cause as if such party had actually appeared (a).

So if defendant having privilege of parliament, refuse to appear on return of sequestration. 45 Geo. 3, c. 124, s. 4.

S. 12. So if defendant, having privilege of parliament, neglect to appear on return of process of sequestration issued against him for not appearing, the Court may, on motion, or other application of plaintiff, upon producing the return of such sequestration in Court, appoint a

(a) In *Williams v. Jones*, 8 Sim. 471, the plaintiff served the defendant, who was in custody for want of appearance, with notice to enter her appearance within fourteen days; and on her not having done so, he moved that the junior six clerk might be directed to enter an appearance for her. In the mean time, however, she had been discharged, because the plaintiff had not brought her to the bar of the Court within thirty days from the time of her being in custody, according to Rule 5, p. 143, *post*: Held that, as the defendant was no longer in custody, the Court had no authority to make the order.

The fourteen days mentioned in this section are exclusive of the first, and inclusive of the last day.—*Ansdell v. Whitfield*, 6 Sim. 356.

clerk in Court to enter an appearance for such defendant, and such proceedings may be thereupon had as if the party had actually appeared.

S. 13. And when such defendant shall have appeared to any bill for discovery, or an appearance shall have been entered for him, according to the provisions aforesaid, and he shall refuse, or neglect, to put in his answer within the time allowed by the rules and orders of the Court, the plaintiff may obtain an order that the bill be taken *pro confesso*, unless the defendant, within eight days after being served with the order, show good cause to the contrary.

Bill of discovery to be taken *pro confesso* and given in evidence, if defendant refuse to answer after appearance.
45 Geo. 3, c. 124, s. 5.

S. 14. And every bill so taken *pro confesso*, or an examined copy thereof, may be given in evidence as to all such facts and circumstances, and on behalf of such persons as the answer would have been evidence of, if the same had been put in, and had admitted the same facts and circumstances, and so with regard to every other bill of discovery taken *pro confesso* under the provisions of the Act.

Bill taken *pro confesso*, may be read in evidence as an answer admitting the facts.
45 Geo. 3, c. 124, s. 6.

S. 15. The following rules and regulations to be adopted by the Court of Chancery for taking bills *pro confesso*, viz. :—

1. When an attachment shall have issued against a defendant for a contempt in

On return of non est in-ventus to attachment for

contempt in
not answer-
ing the same
proceedings
as heretofore.

not answering, and such defendant shall not have been taken, and the sheriff shall have returned *non est inventus*, the Court shall, upon motion, without notice, order the serjeant-at-arms to apprehend such defendant, and the same proceedings may thereupon be had, as if such order had been made in the manner heretofore in use (a). But the Court must be satisfied by the affidavit of the solicitor of the plaintiff, or of his town agent, if the attachment was issued by such town agent, that due diligence was used to ascertain *the place where such defendant was at the time of issuing such writ*, and in endeavouring to apprehend him, and that the person suing forth such writ verily believed at the time of suing forth the same that such defendant was in the county in which such writ was issued (b).

(a) This rule is altered by the 9th Order, of August, 1841, by which it is ordered, that upon the sheriff's return *non est inventus* to an attachment issued against the defendant for not answering, the plaintiff shall be entitled, on producing the affidavit mentioned in the above rule, to a writ of sequestration, in the same manner that he was before entitled to such writ upon the like return of the serjeant-at-arms.

The decisions, however, with reference to this rule, will still be applicable to the new practice.

(b) In *Handfield v. Woolley*, 4 Sim. 122, the Vice-Chancellor held, that the affidavit required by this rule must be made by

2. If any defendant being in contempt When plaintiff issues a Habeas corpus, and de-
for not answering, and having been brought

the clerk who issued the attachment, and that the town agent must join in the affidavit, swearing as to his belief.

To ground an order for the serjeant-at-arms under this rule, the affidavit must state the party's belief that at the time of suing forth the attachment the defendant was in the county into which the writ was issued, and not merely that his last known place of residence was in that county.—*Handfield v. Wildes*, 2 Russ. & Myl. 91. But it need not state the party's belief that due diligence has been used in ascertaining the defendant's residence, and in endeavouring to apprehend him. It must, however, swear to those facts, and in some way or other satisfy the Court of their truth.—*Wright v. Green*, 2 Russ. & Myl. 93.

An affidavit which went to show that due diligence had been used to discover the defendant's *residence*, and not the *place* where he was at the time of issuing the attachment, was held to be insufficient, for the words of the Act should be precisely followed.—*Davis v. Hammond*, 5 Sim. 9.

The Court will not order the serjeant-at-arms, upon a return of *non est inventus*, upon any other affidavit than that of the solicitor, or his town agent, stating that due diligence has been used in endeavouring to apprehend the defendant, as required by Section 1. The affidavit of the town agent showing that he issued the writ, and of the sheriff's officer showing the steps taken by him to apprehend the defendant, and the manner in which his endeavours were eluded, will not be sufficient.—*Pugh v. Pugh*, 2 Myl. & K. 358. See also *Nelthorpe v. Wright*, 2 Keen, 263.

When a defendant, against whom an order for a serjeant-at-arms has issued, for want of an answer, and *non est inventus* has been returned, files his answer, and gets the common order for clearing his contempt on payment of costs, and the answer is afterwards successfully excepted to for insufficiency, the plaintiff is entitled to take up and go on with the process of contempt from the point at which it was stopped by the order for clearing the contempt; and, therefore, a sequestration for want of an an-

defendant still
refuses to put
in his answer,
the bill to be
taken *pro*
confesso.

to the bar of the Court, shall be committed, or remanded back to the Fleet, the plaintiff may sue forth a *habeas corpus* as heretofore, but there must be at least twenty-eight days between the day on which the defendant was so committed, or remanded back, and the return of such *habeas corpus*; and upon such return, in case the defendant shall not have put in his answer, the Court shall order the bill to be taken *pro confesso* (a).

answer to the exceptions sued out immediately on the defendant's submitting to answer them, and a consequential order to take the bill *pro confesso*, are regular.—*Taylor v. Salmon*, 3 Myl. & Cr. 109.

If a defendant escape from the custody of a serjeant-at-arms, the Court will not grant a sequestration, but a second order for a serjeant-at-arms must be obtained.—*Morris v. Smith*, 8 Sim. 33.

(a) A defendant, who was in contempt for want of answer, was brought up from the King's Bench Prison, under Rule 6, (p. 144, *post*,) and turned over to the Fleet, and a counsel and solicitor were assigned him, but he did not put in his answer: Held, that the bill could not be taken *pro confesso*, under the above rule, until the defendant had been again brought up and remanded.—*Viscountess Barnewell v. Cooke*, 7 Sim. 320.

Where a subpoena has been served on a defendant resident abroad, and an appearance has been entered for him, under 4 & 5 Will. 4, c. 82, (p. 161, *post*,) the plaintiff may proceed to take the bill *pro confesso* against him for want of answer, in the same manner as if the subpoena had been served within the jurisdiction of the Court.—*Godson v. Cooke*, 7 Sim. 519.

The following was the course of proceeding adopted for taking the bill *pro confesso*, in a case where the defendant was in contempt for want of answer and in custody:—

3. The party prosecuting any contempt may, without order, sue forth the several writs in process of contempt, returnable

The writs in process of contempt to be sued forth without order.

The defendant *Bennett* had put in an answer to the bill, in which his wife did not join, and no answer had been put in by her, nor had any order been obtained for them to answer separately. *Bennett*, being in contempt for want of the joint answer of himself and wife, and being in the custody of the Warden of the Fleet for contempt in another cause, was now brought to the bar of the Court by *habeas corpus*, for the purpose of having the bill taken *pro confesso* against him. But the Vice Chancellor ruled, that the bill could not then be taken *pro confesso*, but that, under Rule 2, he must be remanded to the Fleet, that another writ of *habeas corpus* must be issued returnable in twenty-eight days; and if the answer was not put in at the return of the writ, the clerk in Court ought to attend with the record, and the bill be then taken *pro confesso*; and an order was made accordingly. On the 13th December, the second *habeas corpus* being returned, and no joint answer having been put in, an order was made, on the motion of the plaintiff, that the bill should be taken *pro confesso*.—*Bilton v. Bennett & ux.*, 4 Sim. 17.

A defendant, in custody for want of the answer of himself and wife, cannot clear his contempt by putting in the separate answer of himself only. And if the plaintiff, after the defendant has been brought up to the bar by *habeas corpus*, proceed to take the bill *pro confesso*, the Court will not interfere so as to prejudice the plaintiff's proceedings, by making an order for the defendant to be at liberty to answer separately, and for his discharge, although it may be proved, by the affidavit of the defendant, that he has no control over his wife.—*Gee v. Cottle*, 3 Myl. & Cr. 180.

The order for taking a bill *pro confesso*, takes effect from the time when it is pronounced, and the Court will not discharge the order, although the answer is filed before the rising of the Court on the day on which the order is made.—*James v. Creswicke*, 7 Sim. 143.

And in *Carr v. Paulett*, 7 Sim. 142, a motion by a defendant,

immediately in case the party in contempt resides, or is in London, or within twenty miles thereof, and, in other cases, returnable in vacation, so that there be fifteen days between the teste and return of each of such writs.

Mode of proceeding where defendant confined for a misdemeanour. 273

4. Where a defendant is confined for a misdemeanour, and has been brought before the Court on an *habeas corpus*, and turned over to the Fleet *pro formâ*, but has been carried back to the prison whence he

against whom the bill had been ordered to be taken *pro confesso*, that the order might be discharged, and he be at liberty to put in his answer, was refused, although he did not mean to enter into evidence, and, the case against him being the same as against the other defendants, he consented to the evidence which had been taken being read against him.

So in *Taylor v. Salmon*, 8 Sim. 450, a defendant, who was in contempt for want of answer, filed his answer, and obtained an order to clear his contempt, and paid the costs. The answer was excepted to, and the defendant submitted to the exceptions, whereupon a sequestration issued, and afterwards the bill was ordered to be taken *pro confesso*. Before that order was drawn up, the defendant answered the exceptions. The answer was taken off the file.

Where a defendant, who was in contempt for not answering, on being brought to the bar of the Court, under Rule 6, (p. 144, *post*), deposed that she was unable, by reason of poverty, to employ a solicitor to put in her answer, upon which the usual reference was made, and the defendant subsequently refused to make any statement to the Master as to the subject of the reference, the Court ordered proceedings to be taken, under the above mentioned rule, for taking the bill *pro confesso*. — *Williams v. Parkinson*, 5 Sim. 74.

came with his cause, another *habeas corpus* may issue, directed to the gaoler or keeper of the prison to which he has been carried back, and thereupon the defendant shall be brought into Court and remanded to the prison whence he came, with his cause, without being turned over again to the Fleet, and the bill may be taken *pro confesso*, in the same manner as if the defendant had been all along in the Fleet.

5. If the defendant under process of contempt for not appearing, or not answering, be in actual custody, and shall not have been sooner brought to the bar of the Court under process to answer his contempt, the plaintiff, if the contempt be not sooner cleared, shall bring the defendant by an *habeas corpus* to the bar of the Court within thirty days from the time of his being actually in custody, or detained (being already in custody) upon process of contempt, and if the last of such thirty days happen out of term, then within the first four days of the ensuing term; and where the defendant is in custody of the serjeant-at-arms, or the messenger, upon an attachment, or other process, the plaintiff shall within ten days after his being taken into such custody, or if the last of such ten days shall happen out of

Defendant in actual custody under process of contempt to be brought before the Court within thirty days, and if in custody of the serjeant-at-arms, &c. within ten days, and in default to be discharged.

term, then within the first four days of the next ensuing term, cause the defendant to be brought to the bar of the Court; and in case he shall not be so brought to the bar of the Court, he shall be discharged out of custody without payment of the costs of the contempt, which shall be paid by the party on whose behalf the process issued (a).

If defendant,
on being
brought be-
fore the Court,
state upon

6. If a defendant, upon being brought before the Court on *habeas corpus*, shall make oath (which shall be administered to

(a) An order having been obtained for the Warden of the Fleet to bring up the defendant to have the bill taken *pro confesso* against him, and a certificate of a surgeon being produced, stating that the prisoner was labouring under an attack of paralysis, and that his removal would be attended with danger, the Vice-Chancellor ordered that he should be at liberty to remain in custody, in the same manner as if he had been brought up to the bar of the Court and remanded.—*Jervis v. Browning*, 2 Jur. 916.

A defendant, who was committed to the Fleet for not answering, was discharged, with costs, in consequence of having been turned over to the Fleet after the expiration of the time limited to the plaintiff by this order, for bringing him to the bar of the Court.—*Greening v. Greening*, 1 Beav. 121.

And where a defendant, who had been taken on an attachment for want of appearance, was discharged under this Act before the plaintiff got an appearance entered for her, it was held, that though a fresh subpoena might be issued against the defendant, no attachment could be taken out upon it.—*Williams v. Townsend*, 6 Sim. 296.

him by the registrar, and he shall be examined in open Court,) that he is unable, by reason of poverty, to employ a solicitor to put in his answer, the Court shall refer it to the Master to inquire into the truth of his allegation, and, on the Master making his report, shall make such order as upon other reports of the like nature after referred to, (see next rule) (a).

oath that he is unable, from poverty, to employ a solicitor to put in his answer, reference to the Master to be ordered to inquire, &c.

(a) A defendant, in contempt for want of answer, having been brought up from the King's Bench Prison, under this rule, and turned over to the Fleet, and a counsellor and solicitor assigned to him, but he did not put in his answer, it was held, that the bill could not be taken *pro confesso*, under Rule 2, (p. 140, *ante*), until he had been again brought up and remanded.—*Viscountess Barnewell v. Cooke*, 7 Sim. 320.

Where the Master has reported that a defendant is unable, by reason of poverty, to employ a solicitor to put in his answer, the Court will, by one and the same order, direct counsel and a solicitor to be assigned to the defendant for the purpose of putting in his answer, and that a *habeas corpus* do issue against him, and the plaintiff's clerk in court do attend with the record on the return of the writ, in order that the bill may be taken *pro confesso* against the defendant, unless he shall in the mean time put in his answer.—*Welford v. Daniell*, 9 Sim. 652.

And where a defendant, who was in contempt for not answering, on being brought to the bar of the Court, under the above rule, deposed that she was unable, by reason of poverty, to employ a solicitor to put in her answer, upon which the usual reference was made, and she subsequently refused to make any statement to the Master as to the subject of the reference, the Court ordered proceedings to be taken under the second rule (p. 140, *ante*), for taking the bill *pro confesso*.—*Williams v. Parkinson*, 5 Sim. 74.

One of the Masters to visit the Fleet Prison four times a year, and examine the prisoners.

7. On the 30th of January, April, July, and October, in every year, one of the Masters, to be named by the Court, shall visit the Fleet Prison and examine the prisoners confined there for contempt, and report, &c. and the Court may order the costs of the contempt of any such prisoner to be paid out of the Suitors' Fund, and may assign a solicitor and counsel to such prisoner, for putting in his answer and defending him in *formâ pauperis*, and direct any such prisoner (having previously done such acts as the Court shall direct) to be discharged out of custody; but if he shall become entitled to any funds out of such cause, the same to be first applied to the reimbursement of the Suitors' Fund (a).

Master may examine on oath and require production of documents.

8. The Master may examine the prisoner, and such other person as he shall think proper, on oath, and call for the production on oath from the officers, &c. of any courts of law or equity, of any records, &c. of such courts.

(a) This rule having been framed for the relief of *defendants*, the Court will not, on an application of the *plaintiff*, order a solicitor to be assigned to a defendant to put in his answer, and that the costs of his contempt shall be taxed, and paid out of the Suitors' Fund.—*Watkins v. Parker*, 1 Myl. & Cr. 370.

9. If it shall appear to the Court that any such prisoner is an idiot, lunatic, or of unsound mind, although no commission has issued, the Court shall appoint a guardian to put in his answer and discharge the defendant; and if the Court shall see fit, the defence may be made in *forma pauperis*

Court to appoint guardians to lunatics, &c. to put in answer, although no commission has issued.

10. Where the defendant has been brought before the Court for contempt in not answering, and refuses or neglects to answer (not being idiot, &c.), plaintiff may obtain an order for amending his bill, on motion or petition, of which notice has been given to the defendant personally, without affecting his process for contempt, and after such amendment, may proceed to take the amended bill *pro confesso*, in the same manner as if it had not been amended; but if the defendant be desirous to answer such amended bill, the Court may allow him time for the purpose, but if he shall not within the time allowed put in a sufficient answer, the process for taking the bill *pro confesso* to be resumed.

Where defendant has been before the Court for contempt in not answering, and refuses, &c. plaintiff may amend without affecting his process for contempt.

11. In every case where defendant has been brought before the Court for his contempt in not answering, and shall refuse or neglect to answer within the next

Defendant not answering within twenty-one days after being brought before the Court

for contempt,
plaintiff may
put in answer
for him.

twenty-one days, plaintiff may, with leave of the Court, on ten days' previous notice to the defendant, after the expiration of such twenty-one days, instead of proceeding to have the bill taken *pro confesso*, put in an answer for the defendant without oath or signature, which, besides the formal parts, shall state that the defendant leaves the plaintiff to make such proofs of the several matters in the bill alleged as he shall be able or be advised, and submits his interests to the Court; and thereupon the suit shall proceed in the same manner as if such answer were really the answer of the defendant with which the plaintiff was satisfied; and the costs of the contempt and of putting in such answer may be provided for in like manner as if the defendant himself had put in such answer.

Or Court
may order de-
fendant to re-
main in cus-
tody until he
answers.

12. Where, upon application of the plaintiff, the Court shall be satisfied that justice cannot be done to the plaintiff without an answer to the bill, or to the interrogatories, from the defendant himself, the Court may order the defendant to remain in custody until answer or further order, but without prejudice to the plaintiff's availing himself of any of the provisions of the Act.

13. Where defendant is in contempt for

not appearing or not answering, and in actual custody under process for such contempt, or being already in custody shall be detained by an attachment for such contempt, and shall not, where the contempt is for not appearing, enter an appearance within twenty-one days after he is lodged in prison, or the attachment is lodged against him, as the case may be, or where the contempt is for not answering, put in an answer within two calendar months after he is lodged in prison or the attachment is lodged against him, the plaintiff shall, within fourteen days after the period computed from the expiration of such twenty-one days within which he may by the provisions of the Act be able to enter such appearance, cause an appearance to be entered for the defendant (a), and at the expiration of such two calendar months proceed to take the bill *pro confesso*, and

Defendant in contempt and in custody for not appearing or not answering, bill to be taken *pro confesso*, unless he appear within twenty-one days, and answer within two months.

(a) A defendant being in custody for want of appearance, the plaintiff suffered the thirty-five days to elapse without an appearance for him : *Held*, that defendant, from the expiration of that period being entitled to his discharge, was illegally in custody, and that it was not competent to plaintiff, having subsequently entered an appearance, to detain him by an attachment for want of answer.

This rule and the 5th regard different subject matters, and are to be applied independently of each other.—*Lewis v. Edwards* ; *Sams v. Evans*, Jur. v. 5, p. 546.

obtain an order for taking the same *pro confesso* within six weeks after the period computed from the expiration of such two calendar months within which he may be able to take the same *pro confesso*, or in default, the defendant, on application to the Court, be entitled to be discharged out of custody, without paying any of the costs of the contempt, unless the Court see good cause to remand him (a).

Defendant
not compella-
ble to take
office copy
of bill.

14. Defendant not to be compellable to take an office copy of the bill, but the clerk in court may require him, before the answer is filed, to make an affidavit denying his ability in consequence of poverty to pay for an office copy.

15. When any person shall have been

(a) Where a plaintiff wishes to have an appearance entered for a defendant under this rule, he must make a motion for the purpose.—*Pitman v. Lockyer*, 7 Sim. 528.

A cause may be advanced for the purpose of taking the bill *pro confesso*.—*Barwick v. Ward*, 5 Sim. 666.

A party in contempt is entitled to be heard in Court, to show that proceedings against him subsequently to the Order placing him in contempt have been irregular.

Upon the proceedings under a decree taking the bill *pro confesso* for want of answer, in a foreclosure suit, the defendant, notwithstanding he is in contempt, ought to be served with warrants to attend the Master.

An order absolute in the first instance to confirm the report made under a decree, taken *pro confesso* for want of answer, is irregular.—*King v. Bryant*, 3 Myl. & Cr. 191.

directed by any decree or order to execute any deed or other instrument, or make a surrender or transfer, or to levy a fine or suffer a recovery, and shall have refused or neglected to do so, and shall have been committed to prison under process for such contempt, or being confined in prison for any other cause, shall have been charged with or detained under process for such contempt, and shall remain in such prison, the Court may, upon motion or petition, and upon affidavit that such person has after the expiration of two calendar months from the time of his being committed under, or charged with, or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, or levy or suffer such fine or recovery, order or appoint one of the Masters in ordinary, or if the act is to be done out of London, then, if necessary, one of the Masters extraordinary, to execute such deed or other instrument, or to make such surrender or transfer for and in the name of such person, and to levy such fine or suffer such recovery in his name, and to do all acts necessary to give validity and operation to such fine and recovery, and to lead or declare the uses thereof; and the execution of the said

Persons in custody for not executing deed, &c. Court may order Master to execute same.

deed or other instrument, and the surrender or transfer made by the said Master, and the fine or recovery levied or suffered by him, shall in all respects have the same force and validity as if the same had been executed or made, levied or suffered by the party himself, and within ten days after the execution or making of any such deed or other instrument, or surrender, or transfer, or levying or suffering such fine or recovery, notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made; and such party, as soon as the deed or other instrument, or surrender, transfer, fine or recovery shall be executed, made, levied, or suffered, shall be considered as having cleared his contempt, except as regards the payment of the costs of the contempt, and shall be entitled to be discharged therefrom under any of the provisions of this act applicable to his case; and the Court shall make such order as shall be just, touching the payment of the costs of or attending any such deed, surrender, instrument, transfer, fine or recovery.

Where person committed for contempt in not delivering or depositing papers, &c.

16. Where a person shall be committed for a contempt in not delivering to any person or persons, or depositing in Court or elsewhere, as by any order may be di-

rected, books, papers, or any other articles or things, any sequestrator or sequestrators, appointed under any commission of sequestration, shall have the same power to seize and take such books, papers, writings, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as they would have over his own property; and thereupon such articles or things so seized and taken shall be dealt with by the Court as shall be just, and after such seizure it may, upon the application of the prisoner, or of any other person in the cause or matter, or upon any report to be made in pursuance of this act, make such order for the discharge of the prisoner upon such terms, and, if it shall see fit, making any costs in the cause, as to the Court shall seem proper.

sequestrators may take possession of them, and Court may discharge the prisoner.
7 Geo. 4, c. 57, s. 50.

17. In any other case of a commitment for contempt, not herein specially provided for, the Court may, upon any such application as last aforesaid, or upon any such report as aforesaid, make such order for the discharge of the prisoner, upon any such terms, and making, if the Court shall see fit, any costs in the cause, as to the Court shall seem proper.

In any other case of commitment for contempt Court may discharge the prisoner on such terms as Court may think proper.

Court may compulsorily discharge persons committed for contempt.

18. Where a person committed for a contempt shall be entitled to his discharge upon applying to the Court, but shall omit to make any such application, the Court may upon any such report as aforesaid, compulsorily discharge such person from the contempt and from custody, and pay the costs of the contempt out of any funds belonging to him, over which the Court may have power, or make them costs in the cause as against him, or may discharge him from the contempt, but leave him in custody for the costs, which may be cleared, if he be insolvent, under the provisions hereinafter contained in that behalf.

Where persons retain possession of land, &c. after service of writ of execution, or order for delivery, writ of assistance to issue at once.

19. Where any party obstinately retains possession of lands or other real property after a writ of execution of a decree, or an order for delivery of possession has been duly served and demand of possession made, and upon an affidavit of such service of the writ of execution, and of such demand made thereunder, and a refusal to comply therewith on the part of the person against whom the writ issued, the party issuing it shall be at liberty, upon an affidavit of service of the writ of execution and demand of possession and refusal, to obtain the usual order of court

for the writ of assistance to issue, and that the intermediate writs of attachment and injunction, further commanding the party to deliver possession, or any other writ, shall be unnecessary.

20. The Lord Chancellor to nominate and appoint the warden, keeper, or other chief officer of every prison within the city of London or the bills of mortality, and their deputies, to be Masters extraordinary, for the purpose of taking and receiving the affidavits and answers of any person or persons within any such prison, and the person so taking such affidavit or answer shall in respect thereof be entitled to receive a fee of one shilling, and no more; and the Court of Exchequer shall in like manner appoint such persons as aforesaid a commissioner or commissioners of the said court, for the purposes aforesaid, and no others, and with the right to the like fee, and no more; and in every case of an answer being sworn in prison, a clerk of a master or baron (as the case may require) shall attend to take and carry back to and from the prison the answer, and shall in respect thereof be entitled to a fee of three shillings and no more.

Keepers of prisons and their deputies to be appointed Masters extraordinary for taking affidavits and answers of prisoners.

Discharge of prisoners under Insolvent Debtors' Act, to extend to process for contempt in not paying money, and to costs incurred by creditors, but subject to taxation.

S. 16. The discharge of any prisoner under any act for the relief of insolvent debtors to extend to all process from courts of equity for contempt for nonpayment of money, or of costs, charges, or expenses, as well as to the costs of contempt, or on purging the same, and to all costs incurred by the creditor before the filing of the prisoner's schedule, in any action, or suit, brought by such creditor against such prisoner for the recovery of his debt.

Where the process of contempt is for the non-performance of an Act, and the contempt is cleared, except as to the costs thereof, such costs to be deemed within the provisions of Section 16.

S. 17. Where the process of contempt is for the nonperformance of an Act, e. g. the not answering the plaintiff's bill, and the bill to which the insolvent is a party is taken *pro confesso*, and he has not paid the costs of the contempt, or the insolvent has fully answered the plaintiff's bill, or interrogatories, or otherwise cleared his contempt, except as regards the payment of the costs, or it has become in event unnecessary for him to do the act for the nonperformance of which he was committed, or attached, the Court of equity in which the suit is depending shall upon application discharge him from the same, except as to the costs thereof, and such costs to be deemed within the provisions contained in the last section.

Powers given by the Act to the Lord

S. 18. The powers given by the Act to the Court of Chancery to be exercised by the Lord

Chancellor, the Lord Keeper, or Commissioners of the Great Seal, and to the Master of the Rolls and Vice-Chancellor respectively; but the reports of the Warden of the Fleet, and of the Masters visiting there, to be made to the Lord Chancellor, Lord Keeper, or Lords Commissioners only, who alone are to make orders thereupon for the discharge or relief of prisoners.

Chancellor to
be executed
by the Lord
Keeper.

S. 19 & 20. The Rules from 5 to 20, both inclusive, to be adopted by the Court of Exchequer.



As to the 2 Will. 4, c. 58, intituled, "An Act to extend the Provisions of an Act passed in the First Year of the Reign of His present Majesty, for altering and amending the Law regarding Commitments by Courts of Equity for contempt, and the taking Bills *pro confesso*, and to explain certain Parts thereof."



This Act was passed for the purpose of extending the provisions of the 11 Geo. 4 & 1 Will. 4, c. 36, to *all cases* where persons are committed for contempt, and enacts, that *in all cases of contempt* other than and besides those provided for by the last mentioned Act, where any person or persons are, or is, or shall at any time here-

Courts of Equity may at any time discharge persons committed for contempt, except as to the costs.

How prisoners discharged from their costs.

after be in prison under any commitment or attachment from the Courts of Chancery or Exchequer, the Court by which such commitment shall have been directed, or out of which such attachment shall have issued, shall (upon the application of the persons or person, against whom such commitment or attachment hath been directed or issued) have the power, if it shall so think fit, to discharge such persons or person from their, his, or her contempt, except as to the costs thereof, for which costs they, he, or she shall remain in custody; and such costs shall be deemed within the provisions of such last mentioned Act, and they, he, or she shall be discharged therefrom and from the process of contempt, in like manner as in such Act is provided in cases of process of contempt for non-payment of money or costs.

Service of Process on Persons out of the Jurisdiction, &c.

As to the Act 2 & 3 Will. 4, c. 33, intituled, "An Act to effectuate the Service of Process issuing from the Courts of Chancery and Exchequer in England and Ireland respectively."

By this and the next Act important discretionary powers are vested in Courts of equity,

for the purpose of enabling plaintiffs to proceed in suits notwithstanding the defendant or defendants may be residing out of the jurisdiction, those Courts being authorized to order that service of subpoenas, or letters missive, on such defendants in any part of Great Britain and Ireland, and in the Isle of Man, respectively, shall be deemed good service. The first of these Acts was confined to suits relating to lands, tenements, or hereditaments in England or Wales; but the second extends these powers to suits relating to charges or incumbrances on such lands, &c. and to money in the government or other public stocks, or shares in public companies, and to defendants residing *in any place* out of the United Kingdom and Ireland.

S. 1 enacts, that it shall be lawful for the Courts of Chancery and of Exchequer in England respectively, if they shall so think fit, *upon special motion* of the complainant or complainants in any suit which hath been or shall be instituted in such Courts respectively concerning lands, or tenements, or hereditaments, situate or being within that part of the united kingdom called England or Wales, to order and direct that service in any part of the united kingdom of Great Britain and Ireland and in the Isle of Man respectively, of any subpoena or subpoenas, letter missive or letters missive, and

Court may order service of subpoena, &c. and all subsequent process on defendants in any part of the United Kingdom and the Isle of Man.

of all subsequent process to be had thereon, upon any defendant or defendants in such suit then residing in such part of the said united kingdom or Isle of Man in which he, she, or they shall be so served, shall be deemed good service of, or be made, upon such defendant or defendants, upon such terms, and in such manner and at such time, as to such Courts respectively shall seem reasonable; and that thereupon it shall and may be lawful for such Courts respectively to proceed upon such service, so made as aforesaid, as fully and as effectually as if the same had been duly made within the jurisdiction of such Courts respectively.

S. 2. Similar powers given to Courts of Chancery and Exchequer in Ireland.

Copy of
prayer of bill
to be served
with subpoena
&c.

S. 3. Along with such subpoena or letter missive, served under any such order as aforesaid of the said Courts of Chancery and of Exchequer of England and Ireland respectively, a copy of the prayer of such complainant's bill to be served upon every such defendant; and no process of contempt to be entered upon any such proceedings as therein before mentioned, nor any decree made absolute in any of the said Courts in England or Ireland respectively, without the special order of such Court, *upon special motion* made for such purpose: but that nothing in

the Act to be held to make it compulsory upon the complainant or complainants in any suit in any of the said respective Courts to serve with process, or bring before such Courts respectively any party or parties, person or persons, further or otherwise than such complainant or complainants were then by law or the practice of such Courts respectively required to do (a).



As to 4 & 5 Will. 4, c. 82, intituled, "An Act to amend and extend an Act of the Second Year of His present Majesty, to effectuate the Service of Process issuing from the Courts of Chancery and Exchequer in England and Ireland."



By s. 1, it is enacted that all the provisions contained in the Act 2 & 3 Will. 4, c. 33, relating to suits instituted in the said Courts respectively concerning lands, tenements, or hereditaments situate in England, or Wales, or in Ireland respectively, shall be extended and applied to *all suits* instituted in the said Courts respectively *concerning any charge, lien, judgment, or incumbrance thereon, or concerning any money vested in any government or other public stock, or public*

The provisions in 2 & 3 Will. 4, c. 33, extended to suits concerning any charge, lien, &c.

(a) For the decisions upon this and the next statute see tit. "SUBPENA," pp. 113, 114, *ante*.

shares in public companies or concerns, or concerning the dividends or produce thereof; and the provisions in the said Act, authorising the said Courts respectively to direct that the service in any part of the united kingdom of Great Britain, or Ireland, or the Isle of Man respectively, of any subpœna or subpœnas, letter missive or letters missive, and of all subsequent process to be had thereon, upon any defendant or defendants in such suit then residing in such parts of the united kingdom, or the Isle of Man, in which he, she, or they shall be served, shall be deemed good service of, or be made upon, such defendant or defendants, upon such terms, and in such manner, and at such time as to such Courts respectively shall seem reasonable, and that thereupon it shall and may be lawful for such Courts respectively to proceed upon such service as fully and effectually as if the same had been duly made within the jurisdiction of such Courts respectively, shall be and they were thereby extended to any defendant or defendants in any such suit or suits as thereinbefore mentioned, who shall appear by affidavit to be resident in any place, specifying the same, out of the united kingdom of Great Britain and Ireland; and that it shall and may be lawful for the said Courts respectively, on motion in open Court, of any of the complainants in any such suit, founded upon an affidavit

And to defendants resident in any place out of the jurisdiction.

or affidavits, or such other documents as may be applicable for the purpose of ascertaining the residence of the party, and the particulars material to identify such party and his residence, and also specifying the means whereby such service may be authenticated, and especially whether there are any British officers, civil or military, appointed by or serving under his Majesty, residing at or near such place, to order that service of subpoena to appear and answer upon the party, in the manner thereby directed, or, in case where the said Courts respectively shall deem fit, upon the receiver, steward or other person receiving or remitting the rents of the lands or premises (if any) in the suit mentioned, returnable at such time as the said Courts respectively shall direct, shall be deemed good service of such party, and afterwards, upon an affidavit of such service had, to order an appearance to be entered for such party, in such manner and at such time as the said Courts respectively shall direct; and that thereupon it shall be lawful for such Courts respectively to proceed upon such service, so made as aforesaid, as fully and effectually as if the same had been duly made within the jurisdictions of such Courts respectively.

Service upon
the receiver,
steward, &c.
to be deemed
good where
Court shall
direct.

S. 2. Where it shall appear upon affidavit, Court may
to be made to the satisfaction of the said Courts order substituted service

where de-
fendant
evades, &c.

respectively, that any defendant in any such suit as before mentioned cannot, by reasonable diligence, be personally served with the subpoena to appear and answer, or that, upon inquiry at his usual place of abode, he cannot be found, so as to be served with such process, and that there is just ground for believing that such defendant secretes or withdraws himself, so as to avoid being served with the process of such Court, then, and in all such cases, it shall and may be lawful for the Court to order that the service of the subpoena to appear and answer shall be substituted in such manner as the Court shall think reasonable and direct by such order.

CHAPTER III.

The Acts of 3 & 4 Will. 4, c. 94 ; 3 & 4 Vict. c. 94 ; and 4 & 5 Vict. c. 52, for regulating the Practice and Proceedings of, and facilitating the Administration of Justice in, the Court of Chancery ; of 5 Vict. c. 5, for abolishing the Equity Jurisdiction of the Court of Exchequer, and appointing additional Judges in Equity ; and of 2 & 3 Vict. c. 54, relating to the Custody of Infants.

As to the 3 & 4 Will. 4, c. 94, intituled, “ An Act for regulating the Proceedings and Practice of certain Officers in the High Court of Chancery in England.”

By this Act various regulations were made with regard to the registrars of the Court and the report office, but the enactments of importance to the practitioner relate principally to the mode in which interlocutory motions, e.g. motions for time to plead, answer, &c. and to amend bills, shall be heard and determined, they being transferred to the Masters instead of being made to

the Court; to the regulation of the fees to be taken for office copies, and the mode of drawing up decrees and orders; and to the examination of witnesses before the examiner. In pursuance of these enactments several Orders were issued on the 21st December, 1833, which will be found set forth at length in the Appendix, *post*, and are also referred to in the Analysis, *ante*.

The following is an abstract of its enactments:—

Offices abolished.

Sect. 1. The office of Master of the report office, and the office of entering clerks, or entering registrars of the Court, and of clerk of the exceptions, and agent to the senior deputy registrar to be abolished.

Registrars.

Sect. 2. Six registrars to be appointed.

Registrars to attend each judge of the Court.

Sect. 3. The registrars to attend each judge of the Court, as the Lord Chancellor, with the concurrence of the Master of the Rolls or the Vice Chancellor, or one of them, shall direct.

Clerks to registrars.

Sect. 4. Six clerks to the registrars to be appointed.

Mode of future appointment of sixth clerk.

Sect. 5. On all future vacancies of the office of sixth clerk to the registrars, the Lord Chan-

cellor to appoint some proper person who has been admitted a solicitor of one of the Courts of Westminster, or has served a clerkship of five years to a solicitor of one of the said Courts.

Sect. 6. *R. W. Fry* and *R. H. Leach* to act as assistant clerks to the registrars, and each of them to succeed to the office of junior clerk to the said registrars; but no clerk to be appointed in their place.

Assistant
clerks to
registrars.

Sect. 7. The Lord Chancellor may appoint one or more additional clerk or clerks to the said registrars, so that the number do not exceed eight.

Lord Chan-
cellor may
increase num-
ber of clerks
in registrars'
office to
eight.

Sect. 8. An officer to be appointed, called "The Master of Reports and Entries," to which office the several registrars and the six senior clerks to the said registrars to be entitled in the event of a vacancy to succeed.

Master of
reports and
entries ap-
pointed.

Sect. 9. A clerk, to be called "The Clerk of Reports," two clerks to be called "Clerks of Entries," and ten clerks of account to be in the office of the Master of reports and entries, and subject to his direction.

Clerks in the
office of
Master of the
reports.

Sect. 10. Any person shall be at liberty to

No recital to
be introduced

into decrees
or orders.

take an office copy of so much only of any decree, order, report, or exceptions as he may require, and, unless the Court shall otherwise specially direct, no recitals shall be introduced into any decree or order, but the pleadings, petition, notice, report, affidavits, exhibits, or other matters or documents on which such decrees or orders shall be founded, shall merely be referred to; and the Lord Chancellor, with the Master of the Rolls and Vice Chancellor, *or one of them*, may make such rules and regulations as to the form of such decrees and orders as he may deem necessary for the proper drawing up of such decrees and orders, and carrying into effect the provisions of the Act in regard thereto.

Clerk and
assistant clerk
of affidavits.

Sect. 11. Clerk and assistant clerk of affidavits to be appointed.

Patentee of
subpoena
office.

Sect. 12. After the death, &c of the present patentee of the subpoena office, all the duties of such office to be performed by the clerk of the affidavits.

Master to
hear all ap-
plications for
time to plead,
&c.

Sect. 13. The Master in ordinary of the High Court of Chancery shall hear and determine all applications for time to plead, answer or demur, and for leave to amend bills, and for enlarging publication, and all such other matters relat-

ing to the conduct of suits in the said Court as the Lord Chancellor, with the advice and assistance of the Master of the Rolls and Vice Chancellor, *or one of them*, shall by any general order or orders direct, in such manner and under such rules and regulations as by any general order or orders, to be also issued by the Lord Chancellor, with the advice and assistance aforesaid, shall be directed; and either party may appeal by motion from the order made on such application to the Lord Chancellor, Master of the Rolls or Vice Chancellor, and the order made on such appeal shall be final.

Sect. 14. No such application to be heard by any of the judges of the said Court of Chancery, except on appeal.

No such application to be made to the Court except on appeal.

Sect. 15. The said Masters, on all applications made to them by virtue of this act, may direct that the costs of all or any of the parties shall be costs in the cause or matter, or may award such liquidated sum by way of costs to any of the parties as they shall think reasonable, and the costs so awarded shall be recoverable in like manner as costs directed to be paid by an order of the Court of Chancery (a).

Costs of application to the Masters.

(a) A party aggrieved by an order made by the Master under the above section in a cause set down at the Rolls, cannot appeal to the Lord Chancellor against the order.—*Hill v. Gomme*, 3 Myl. & Cr. 503.

Masters to be
appointed by
the Crown.

Sect. 16. The appointment of all Masters in ordinary of the Court, other than the accountant-general, to be vested in the Crown.

Master to
report yearly
to the Lord
Chancellor
the state of
the causes,
&c. in the
offices.

Sect. 17. Each of the Masters within the first four days of Michaelmas term in every year to present to the Lord Chancellor a report in writing, stating the days on which he shall have attended at his office during the preceding twelve months, specifying the number of hours occupied in each of such day's attendance; and shall annex to such report a list or schedule of the several causes and matters then pending in his office, showing the then state and stage of the same respectively; and the Lord Chancellor may order such list or schedule to be published in such manner as he shall think fit.

As to the
person to be
appointed
chief clerk.

Sect. 18. No person to be appointed chief clerk to any Master unless he shall have been admitted as an attorney or solicitor for five years, or have been junior clerk in the office of one of the Masters for ten years.

Suitors not
compellable
to take copies.

Sect. 19. No person shall be compelled or required to take or pay for any copy of any paper or document being in the office of any Master in ordinary, and every person shall be at liberty to take a copy of such part only as he may require of any paper or document being

in the office of any such Master, and of any interrogatories and depositions being in the office of either of the examiners of the said Court; provided always, that in the taxation of costs as between party and party, or as between solicitor and client, no person be allowed the costs of the copy of any paper or document, or any part of any paper or document, originating in the Master's office, or brought in before a Master, unless such copy shall have been either made in the Master's office or transcribed from a copy made therein, and taken by the party claiming to be allowed the costs of such second or other copy, or unless such copy shall have been made for the use of any Master or of the Court, or by the desire or for the use of the client or clients of the solicitor claiming to be paid for such copy.

Sect. 20. The Masters, registrars, and clerks of the registrars, master of reports and entries, clerk of affidavits, and examiners, to hold their offices during good behaviour. The Masters, &c. to hold their offices during good behaviour.

Sect. 21. The several offices to be open for business, and the officers and clerks to give their attendance personally, during such hours of the day as the Lord Chancellor, with the Master of the Rolls and Vice Chancellor, or one of them, shall direct. Hours of business in the several offices.

The Lord Chancellor empowered to make orders for simplifying and settling the practice of the Court;

Sect. 22. The Lord Chancellor, with the advice of the Master of the Rolls and Vice Chancellor, *or one of them*, may forthwith make and issue such general orders as they shall think fit for carrying the provisions of the Act into execution, and such other rules and orders, *not being inconsistent with the enactments and provisions of the Act*, as they shall think fit for simplifying, establishing, and settling the course of practice of the said Court and of its several officers.

and to annul and alter the same.

Sect. 23. The Lord Chancellor, with the like advice of the Master of the Rolls and Vice Chancellor, *or one of them*, may, by the like general orders, to be made and issued by them as aforesaid, from time to time annul, alter, or vary any orders which may have been so as aforesaid made and issued, and to issue new rules and orders for the purposes before mentioned, or any of them.

Master of the Rolls to hear and determine motions.

Sect. 24. The Master of the Rolls for the time being shall hear and determine all such motions arising in causes as shall be duly made before him, according to the usage and practice of making motions in causes before the Lord Chancellor, and all such pleas and demurrers filed in causes depending in the High Court of Chancery as shall be duly set down for hearing

before him, and all orders made by the said Master of the Rolls for the time being upon the hearing of such motions, pleas, and demurrers respectively, shall be deemed valid orders of the Court of Chancery, subject, nevertheless, in every case to be discharged, reversed, or altered by the Lord Chancellor for the time being.

Sect. 25. But the present Master of the Rolls shall not be required to hear and determine any such motions, pleas, or demurrers, unless he shall think fit to give directions for that purpose.

Exception as to the present Master of the Rolls.

Sect. 26. Every solicitor who shall be appointed to any office under the Act, to be struck off the roll.

Solicitors appointed to any office to be struck off the roll.

Sect. 27. The examiners of the Court of Chancery may administer the usual and accustomed oaths and take the usual affirmations of the witnesses examined before them; and all depositions of witnesses examined in the Court of Chancery shall be taken in the first person; and the said examiners shall receive and account for all the fees heretofore receivable by the said examiners or their clerks (*a*).

Examiners authorised to administer oaths to witnesses.

(*a*) This section does not extend to depositions of witnesses examined before commissioners in the country.—*Dryden v. Frost*, 8 Sim. 380.

Vacancies
in Six Clerks'
Office not to
be filled up.

Sect. 28. Vacancies in the Six Clerks' Office not to be filled up until the number of such six clerks is reduced to two.

Sworn clerk
not to take
articled
clerks.

Sect. 29. No clerk to be articled to any sworn clerk or writing clerk of the Court at any time between the passing of the Act and the 1st of May then next.

Powers vest-
ed in the Lord
Chancellor.

Sect. 30. The powers and authorities given by the Act to the Lord Chancellor, to be exercised by the Lord Keeper or Lords Commissioners of the Great Seal.

New mode of
issuing sub-
pœnas.

Sect. 31. Subpœnas to be open writs, and sealed with a seal to be kept by the patentee of the subpœna office, instead of the great seal, and 5s. 6d. to be paid for sealing each subpœna.

Annual sums
paid to depu-
ty registrars,
&c. to cease.

Sect. 32. The several annual sums paid to sub or deputy registrars and their clerks, and to the master of the report office and his clerks, to cease.

Salaries to
Officers.

Sect. 33. The salaries specified in the schedule to the Act, to be paid to the several officers out of the fee-fund.

Proportion of
salaries on
death, resign-
ation, &c.

Sect. 34. A proportionate part of salary to be paid in the event of the death, resignation, or

removal of any of the officers appointed by the Act, between any of the quarterly days of payment.

Sect. 35. The sum of 125*l.* to be paid to the clerk of affidavits, and 37*l.* 10*s.* to his clerk, in lieu of salary, from the passing of the Act to 25th November following.

First payment to clerk of affidavits.

Sect. 36. The Lord Chancellor to give directions as to the disposal of any surplus of the fee-fund, and as to providing for any deficiency.

Provision in case of surplus or deficiency of fee fund.

Sect. 37. The Lord Chancellor, with the concurrence of the Master of the Rolls and the Vice Chancellor, or one of them, to fix and settle a table of fees to be taken by the clerks to the Masters, and by the registrars and other clerks; the masters of reports and entries to retain out of the fees received by him, and to pay to the clerk of the reports 1½*d.* per folio of ninety words for every office copy delivered by him, and to the clerks of the entries the like sum for every entry made by them; and the clerk of affidavits and examiners to pay over a like sum of 1½*d.* per folio for all office copies made by the clerks.

Table of fees to be settled.

Allowances for copying.

Sect. 38. The table of fees, within fourteen days after the same shall be settled, to be laid before parliament.

Table of fees to be laid before parliament.

before parliament, and if parliament shall not be then assembled, within fourteen days after the next meeting of parliament.

2500*l.* to be paid to each of the Masters.

Sect. 39. The annual sum of 2500*l.* to be paid quarterly to each of the Masters, exclusive of the accountant-general, out of the Suitors' Fund.

1½*d.* per folio to be paid to the copying clerks in the Master's office.

Sect. 40. The copying clerks of the Masters to receive 1½*d.* per folio of ninety words, and no more, for every copy of every document or writing made in the Masters' offices, from the parties requiring the same, and also for the transcript of every report.

Officers and clerks not to take gratuities.

Sect. 41. No Master in ordinary of the Court of Chancery, or any person holding any office, situation, or employment, in any office of the said Court, or under any of the judges or officers thereof, to take any gratuity, under a penalty of 500*l.*, and the loss of his office or situation.

How offenders may be prosecuted.

Sect. 42. Any such offender may be prosecuted, either by information at the suit of the attorney-general, or by criminal information, or indictment.

Expences of office to be paid.

Sect. 43. The Lord Chancellor may order expences of the several offices to be paid out of the Suitors' Fund.

Sect. 44. The Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellor, or one of them, may from time to time, by any general order or orders, direct that the several fees, authorized by the Act to be taken, may be varied, and increased, or reduced in amount, or wholly omitted to be received.

The Lord Chancellor may alter the fees.

Sect. 45. The surplus interest arising from the Suitors' Fund to be invested in government or parliamentary securities.

Surplus interest of Suitors' Fund to be invested.

Sect. 46. The monies placed out and invested on account of the Suitors' Fund to be called in if required.

Investments on account of Suitors' Fund to be called in if required.

Sect. 47. The Lord Chancellor may authorize the change of any securities to be purchased pursuant to the Act.

Power to change securities.

Sect. 48. The Lords of the Treasury may grant compensation to certain officers affected by the Act.

Compensation.

Sect. 49. And to the secretary of the Master of the Rolls.

Sect. 50. No Master in ordinary of the Court of Chancery to be entitled to any annuity or allowance in respect of length of service.

Masters not to be entitled to annuity for length of service.

Orders for
payment of
annuity to
state the cause
of making it.

Sect. 51. In case the Lord Chancellor shall order any annuity to be paid to a Master for any permanent infirmity, the cause of the grant to be stated, and a copy of the order to be laid before parliament.

Copy of order
for any an-
nuity to be
laid before
parliament.

Sect. 52. In all cases in which the Lord Chancellor shall order an annuity to be paid to any officer under the Act, a copy of such order to be laid before parliament.

Commence-
ment of Act.

Sect. 53. The Act to come into operation on the 26th of November, 1833.

As to the Act 3 & 4 Vict. c. 94, intituled, "An Act for facilitating the Administration of Justice in the Court of Chancery."

This Act takes a more extensive range, and was intended to operate not only upon the practice of the Court, and particularly with reference to matters connected with the Six Clerks' Office, but also upon the form and mode of pleading in equity. It enacts—

The Lord
Chancellor,
with the
Master of the

Sect. 1. That the Lord Chancellor, with the advice and consent of the Master of the Rolls and

the Vice-Chancellor, *or one of them*, shall be empowered and required by any rules or orders to be from time to time made, at any time within five years from the passing of the Act, to make such alterations as may seem expedient in the forms of writs and commissions, and the mode of sealing, issuing, executing, and returning the same, and also in the form of and mode of filing bills, answers, depositions, affidavits, and other proceedings, and in the form and mode of taking or obtaining discovery by answer in writing, or otherwise, and in the form and mode of pleading, and in the form and mode of taking or obtaining evidence, and generally in the form and mode of proceeding to obtain relief, and in the general practice of the Court with relation thereto, and also in the form and mode of proceeding before the Masters, and in the form and mode of drawing up, entering, and enrolling orders and decrees, and of making and delivering copies of pleadings and other proceedings, and to make such regulation as to the taxation, allowance, and payment of costs, and for altering, superintending, controlling, and regulating the business of the several offices of the Court, and also of collecting the fees payable to the Suitors' Fee Fund, and for directing the payment into the Suitors' Fee Fund of the copy money now received by any of the officers to their own use, and otherwise for carrying into effect the

Rolls and Vice-Chancellor, or one of them, empowered to make alterations in the forms of writs, &c. and in the pleading and practice of the Court.

New orders
to be laid
before parlia-
ment.

said alterations as to them may seem proper; and all such rules, orders, and regulations shall be laid before both houses of parliament, if parliament be then sitting, immediately upon the making and issuing of the same; or, if parliament be not sitting, then within five days after the next meeting thereof; and *no such rule, order, or regulation shall have effect until each house of parliament shall have actually sat thirty-six days after the same shall have been laid before each house of parliament as aforesaid*, and every rule, order, or regulation so made shall from and after the time aforesaid be binding and obligatory upon the Court, and be of the like force and effect, as if the provisions contained therein had been expressly enacted by parliament, unless the same shall, by vote of either house of parliament, be objected to.

Additional
officers may
be appointed.

Sect. 2. That such additional officers, clerks, and messengers, in any of the present or future offices of the Court, as the Lord Chancellor, with the advice and consent aforesaid, shall determine to be necessary and proper, shall and may be from time to time appointed.

Expenses to
be paid out of
the Suitors'
Fund.

Sect. 3. That the present and future salaries and expenses of writing for the Court shall be paid out of the Suitors' Fund.



It will be observed, that the foregoing act requires that all rules, orders, and regulations to be made in pursuance of its provisions shall be laid before both houses of parliament, if parliament be then sitting, immediately upon the making and issuing of the same, or if parliament be not then sitting, then within five days after the meeting thereof; and that no such rule, order, or regulation, shall have effect until each house of parliament shall have actually sat thirty-six days after the same shall have been laid before each house of parliament. This enactment is altered by the 4th & 5th Vict. c. 52, intituled, "An Act to amend an Act of the 4th Year of the Reign of her present Majesty, intituled, 'An Act for the Administration of Justice in the Court of Chancery,'" and by the latter act it is declared "that every rule, order, or regulation, made in pursuance of the 3 & 4 Vict. c. 94, shall, from and after the time in that behalf to be appointed by the Lord Chancellor, with such advice and consent as in the said Act mentioned, and if no time shall be so appointed, then from and after the making thereof, be binding and obligatory on the said Court, and be of like force and effect as if the provisions therein contained had been expressly enacted by parliament, but that if either of the houses of parliament shall, by any resolution passed at any time before such house

of parliament shall have actually sat thirty-six days after such rules, orders, and regulations shall have been laid before such house of parliament, resolve that the whole or any part of such rules, orders, or regulations ought not to continue in force, in such case the whole or such part thereof as shall be so included in such regulations shall, from and after such resolution, cease to be binding and obligatory on the said Court: Provided also, that no such rule, order, or regulation as aforesaid, shall by virtue of the said act be of the like force and effect as if the provisions therein contained had been expressly enacted by parliament, unless the same shall be expressed to be made in pursuance of the said Act and of this Act; and that every such rule, order, or regulation so expressed to be made in pursuance of the said Act and of this Act, which shall not be laid before both houses of parliament within the time of the said recited Act limited for that purpose, shall from and after the expiration of such time be absolutely void and of no effect."

In pursuance of these Acts, various Orders have recently been issued, bearing date the 26th of August, 1841. They are set forth at length in the Appendix, *post*, and are also referred to in the Analysis under the various subjects to which they relate. As they effect only a small portion of the alterations evidently

intended by the framers of the 3 & 4 Vict. c. 94, it is presumed they are the precursors of many others still in contemplation.



Abolition of the Court of Exchequer as a Court of Equity.

As to the Act, 5 Vict. c. 5, intituled, "An Act to make further Provisions for the Administration of Justice" (a).



The Act recites that the business on the plea side of the Court of Exchequer had of late years greatly increased, and that a transfer to the

(a) The principal objects of this Act are to transfer the equity jurisdiction of the Court of Exchequer to the Court of Chancery, and to appoint additional Vice Chancellors. As a consequence of such transfer, power is given by sect. 4 to the Court of Chancery, upon the application of any party interested by motion or petition in a summary way, to restrain the Bank of England, or any other public company, from permitting the transfer of any stock or shares, or from paying any dividends due or to become due thereon; and in lieu of the writ of distringas heretofore issued from the Court of Exchequer, a distringas, in the form set out in the first schedule to the Act, is to be issuable from the Court of Chancery, and sealed at the subpoena office (sect. 5), the force and effect of, and practice relating to which are to be the same as appertained to the writ of distringas heretofore issued from the Court of Exchequer.

The other principal sections for effecting the intended arrangement, and appointing the additional judges and their officers, are the 7th, 13th, 17th, 19th, 20th, 21st, 22nd, 23rd, 24th, 30th, 31st, 32nd, and 38th.

Court of Chancery of the jurisdiction of the Court of Exchequer as a Court of equity would relieve the judges of the latter Court, and tend to the public advantage, and enacts,

The jurisdiction of the Court of Exchequer as a Court of equity abolished and transferred to the Court of Chancery.

Sect. 1. That on the 15th October, 1841, all the power, authority, and jurisdiction of the Court of Exchequer as a Court of equity shall be transferred to the Court of Chancery.

Suits depending and proceedings transferred to the Court of Chancery.

Sect. 2. That all suits and matters which on the said 15th October, 1841, shall be depending in the said Court of Exchequer as a Court of equity, shall by force of the Act be transferred, with all the proceedings therein, to the Court of Chancery; and that all decrees or orders which shall have been made by the said Court of Exchequer in such suits and matters shall to all intents and purposes be deemed and taken to be decrees or orders respectively of the said Court of

Writs returnable in Exchequer to be returnable in Chancery.

Chancery; and that all writs which shall have been then issued in the same suits and matters, or any of them, returnable in the said Court of Exchequer, shall be by force of the Act returnable in the Court of Chancery. But that in case it shall appear to the Court of Chancery to be just and expedient that any suit or suits, matter or matters, so transferred to the Court of Chancery should be wholly or partially carried on according to or regulated by the present practice of the Court of Exchequer, or that any

Court of Chancery may direct transferred suits to be carried on according to the practice of either Court.

question or questions, arising in the same suit or suits, matter or matters, should be decided with reference to the present practice of the said Court of Exchequer, it shall be lawful for the Court of Chancery to make such order or orders in relation thereto as to the said Court of Chancery shall seem meet.

Sect. 3. That it shall be lawful for the Lord Chancellor to make such general orders (as well with respect to the taxation and allowance of costs as in all other respects) as to him shall seem fit, by reason of the transfer of such suits and matters as aforesaid, or for carrying the same transfer into complete effect (*a*).

Lord Chancellor to make such orders, &c. as may be necessary by reason of transfer.

(*a*) By a general order of the Lord Chancellor, dated the 12th October, 1841, his lordship has ordered that every plaintiff and defendant in any suit to be transferred under the authority of this Act, shall, *on or before the 15th October, 1841*, name one of the sworn clerks of the Court of Chancery to conduct and carry on and act in such suit as clerk in court; and that in default thereof either party may cause to be served upon the other a notice in writing, requiring the party served to appoint a clerk in court within seven days after the day of service of such notice, which shall be left at the dwelling-house or usual place of abode of such party; but if that cannot be ascertained, and affidavit shall be made to that effect, the service of such notice upon the solicitor who was last concerned for such party in the Court of Exchequer, shall be deemed good service; and in case at the expiration of the period so to be mentioned in such notice no clerk in court shall have been appointed, then the party giving such notice may apply to the Court to appoint a clerk in court for the party so making default, and such application may be,

Court of
Chancery
may summar-
ily restrain
the Bank of
England, &c.
from permit-
ting transfer
of stock, &c.

Sect. 4. That after the 15th October, 1841, it shall be lawful for the Court of Chancery, on the application of any party interested by motion or petition, in a summary way, without bill filed, to restrain the Governor and Company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company, which may be standing in the name or names of any person or persons, or body politic or corporate, in the books of the

upon motion or petition without notice, but shall be supported by an affidavit of such notice having been served, and of the address of the party or solicitor served; and that no proceeding shall be taken by any party in any suit so to be transferred as aforesaid until after the appointment of a clerk in court; and that where such appointment shall be made by the Court, the order directing the same shall contain the address of the party so making default in such appointment, or of the solicitor representing such party, in order that the clerk in court so appointed may be enabled to forward notices and other matters to such party.

By the same general order, it is also ordered that so far as regards the taxation and allowance of costs in any of the suits or matters so to be transferred, and which shall not by any order of the Court of Chancery be directed to be regulated in that particular by the present practice of the Court of Exchequer, such costs shall be taxed and allowed in manner following, viz. the costs previously to the 15th October, 1841, shall be taxed and allowed according to the practice of the Court of Exchequer, and the costs from and inclusive of the said 15th October, according to the practice of the Court of Chancery.

See General Order, 1841, Oct. 11th, *Appendix, post.*

Governor and Company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every order of the said Court upon such motion or petition shall specify the amount of the stock, or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing; but that the said Court shall have full power, *on the application of any party interested*, to discharge or vary such order, and to award such costs upon such application as to the Court shall seem fit.

Sect. 5. That instead of the writ of distringas heretofore issued from the Court of Exchequer, a writ of distringas in the form set out in the first schedule to the Act (a), shall, on and after the 15th October, 1841, be issuable from the Court of Chancery, and sealed at the subpoena office; and that the force and effect of such writ, and the practice relating to the same, shall be such as is now in force in the Court of Exchequer; but that such writ, and the practice relating to it, and the fees and allowances in respect thereof, shall be subject to such orders and regulations

Writ of distringas to be issued from the Court of Chancery, according to the form in the first schedule to the Act.

(a) Since this Act was passed, certain general orders have been issued, relative to this writ, for which see Appendix, p. 377, *post*.

as may be made with reference to the proceedings and practice of the Court of Chancery.

Certain funds standing in the name of the accountant-general of the Exchequer, transferred to the Queen's remembrancer.

Sect. 6. That on the said 15th October, 1841, the sum of 1614*l.* 19*s.* 6*d.*, 3 per cent. annuities, standing in the name of the accountant-general of the Court of Exchequer, in trust in a cause depending in the same Court as a court of revenue, "*The King v. Delamotte*," and the sum of 313*l.* 1*s.* 9*d.* like annuities, standing, &c. in a cause depending in the same Court as a court of revenue, "*The King v. Whitworth*," shall become vested in the Queen's remembrancer in the same Court, in trust to attend the orders of the said Court of Exchequer, and the several sums of cash specified in the second schedule, being cash in the Bank of England, to the account of the accountant-general of the said Court of Exchequer, in trust in the causes therein specified, shall become vested in the Queen's remembrancer of the same Court, in trust to attend the orders of the said Court of Exchequer.

Stocks, &c. standing in the name of the receiver-general of the Court of Exchequer to be transferred into the name of the accountant-general of the Court of Chancery.

Sect. 7. That on the 15th of October, 1841, all stocks, funds, annuities, and securities whatsoever which shall then be standing in the name of the accountant-general of the Court of Exchequer, as such accountant-general, in the books of the Bank of England (except the funds vested in the Queen's remembrancer), or

in the books of any other body politic or corporate, or company whatsoever, and all such exchequer bills or other securities which at any time before the said 15th of October, 1841, shall have been transferred into, or vested in the name of, or shall be in the custody or power of the accountant-general of the Court of Exchequer, as accountant-general, and all real and personal estate, effects and property whatsoever (except as aforesaid), which shall at any time before the said 15th of October have been conveyed, assigned, or transferred, or made payable, or secured to the accountant-general of the said Court of Exchequer, as such accountant-general, and which shall not have been applied to the trusts and purposes to which the same were applicable under the order or direction of the said Court of Exchequer, shall, on the said 15th of October, become vested in the accountant-general of the Court of Chancery for the time being, in trust, to attend the orders of that Court, and may be proceeded upon by and in the name of the accountant-general of the Court of Chancery, in right of his office, as the same might have been proceeded upon by and in the name of the accountant-general of the Court of Exchequer, and shall be applicable to all such purposes as the same were respectively applicable to, except where otherwise directed by the Act; and all such funds, &c.

and to be applicable to such purposes as the same were respectively applicable to.

shall be carried by the proper officers of the said companies to the credit of the accountant-general of the said Court of Chancery.

Accountant-general of the Court of Exchequer to make up accounts with accountant-general of the Court of Chancery.

Sect. 8. That the accountant-general of the Court of Exchequer shall, on the said 15th of October, 1841, make up accounts with the accountant-general of the Court of Chancery of all stocks, funds, and securities standing in his name, and also make out a schedule of all cash, exchequer bills, bonds, mortgages, &c. deposited with him, and of all monies which shall have been paid into the Bank of England to his credit as accountant-general, and not invested in any stocks, funds, annuities, or securities, and deliver up to the accountant-general of the Court of Chancery all books and documents in his possession or power.

Stocks, &c. to be entered causewise, and the cash to become one common cash.

Sect. 9. That all stocks, funds, and securities and cash, which by virtue of the Act shall become vested in the accountant-general of the Court of Chancery, shall be entered causewise in the books of such accountant-general and of the report office of the said Court of Chancery; and that the cash to be transferred to the credit of the accountant-general of the Court of Chancery by virtue of the Act, and all other cash to the like credit, shall be deemed one common and general cash, and as such shall be issued

and payable in such manner as the said Court of Chancery hath directed or shall direct.

Sect. 10. That on the death, resignation, or removal of every accountant-general of the Court of Chancery, all property vested in him as such accountant-general shall vest in his successor.

On death, &c. of accountant-general property to vest in his successor.

Sect. 11. That all the funds belonging to the Suitors' Fund of the Court of Exchequer shall be transferred to the Suitors' Fund of the Court of Chancery, and be deemed part of the latter fund, and applied accordingly.

Funds belonging to the Suitors' Fund in the Court of Exchequer transferred to the like fund in the Court of Chancery.

Sect. 12. That the funds standing in the name of the accountant-general of the Court of Exchequer to an account intituled "The Redemption Fund of the Suitors of the Court of Exchequer," be transferred into the name of the accountant-general of the Court of Chancery, and placed to the credit of the account intituled, "Account of Securities purchased with surplus interest arising from Securities carried to an Account of Monies placed out for the benefit and better security of the Suitors of the Court of Chancery," and be deemed part of such fund, and applied accordingly.

Certain other funds also to be transferred.

Sect. 13. That in every case in which, by virtue of any Act of Parliament or otherwise,

Money directed by any Act, &c. to be paid into

the Bank to the credit of accountant-general of Exchequer to become payable to credit of accountant-general of the Court of Chancery.

Stocks &c. transferrable into the name of accountant-general of Exchequer, to become transferred into the name of the accountant-general of the Court of Chancery.

any sum of money would, on or after the 15th of October, 1841, be payable by any person or persons, or body politic or corporate, into the Bank, in the name and with the privity of the accountant-general of the Court of Exchequer, and which when paid in would be subject to the order of the said Court of Exchequer, sitting as a Court of Equity, the same sum shall be paid into the Bank in the name and with the privity of the accountant-general of the Court of Chancery; and in every case in which any money, funds, annuities, or securities, or other property would, on or after the said 15th of October, 1841, be payable or transferable into the name of or become vested in the accountant-general of the Court of Exchequer, and which when paid or transferred accordingly would be subject to the order of the same Court sitting as a Court of equity, the same money, funds, &c. shall be paid and transferred into the name of or vested in the name of the accountant-general of the Court of Chancery, in trust to attend the order of that Court, and be applicable to the same purposes as the same would have been applicable if the Act had not passed, except where otherwise directed by the Act.

Lord Chancellor may make orders as to arranging of balances

Sect. 14. That it shall be lawful for the Lord Chancellor to make such orders from time to time as to him shall seem meet with respect to

the time and manner of arranging the balances of the accountant-general of the Court of Chancery with the Bank of England, and generally for carrying the Act into effect, so far as the same relates to the business of the office of the accountant-general and the report office, and the transfer of property from the accountant-general of the Court of Exchequer to the accountant-general of the Court of Chancery.

with the Bank, and generally relating to the business of the office of accountant-general.

Sect. 15. That the offices of accountant-general of the Court of Exchequer, Master on the equity side of the Court of Exchequer, clerk to the Masters on the equity side of the same Court, clerk to the accountant-general and clerk of the reports of the Court of Exchequer, and clerk examiner to the barons of the same Court shall be abolished.

Certain offices of the Court of Exchequer abolished.

Sect. 16. That proportionate parts of the salaries, payable to the several officers on the equity side of the Court of Exchequer, shall be paid to the 15th of October, 1841, out of the funds standing to the credit of the Suitors' Fund of that Court.

Proportionate parts of the salaries of officers of Court of Exchequer to be paid to 15th October, 1841.

Sect. 17. That all the bills, answers, decrees, affidavits, and proceedings of the Court of Exchequer as a Court of Equity, and all decrees and minute books, and all other books and do-

Proceedings of the Court of Exchequer as a Court of Equity, to be delivered to the Master of the Rolls, and

deemed records of the Court of Chancery.

cuments whatsoever, relating exclusively to proceedings in that Court as a Court of Equity, shall be delivered to such person and persons as shall be appointed by the Master of the Rolls to receive and take charge of the same; and after such delivery shall be deemed records of the Court of Chancery, in the custody of the Master of the Rolls.

Duties of accountant-general and Masters in revenue business to be performed by Queen's remembrancer.

Sect. 18. That the duties of the accountant-general and the Masters on the equity side of the Court of Exchequer, with respect to revenue business, otherwise than as a Court of Equity, shall, after the 15th of October, 1841, be performed by the Queen's remembrancer.

Her Majesty empowered to appoint two additional judges assistant to the Lord Chancellor, to be respectively called Vice Chancellor.

Sect. 19. That it shall be lawful for her Majesty to nominate and appoint, by letters-patent, two fit persons being or having been respectively barristers-at-law of fifteen years standing at the least, to be additional judges assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional judges to be called Vice Chancellor.

Power to supply vacancies in the office of Vice Chancellor first appointed;

Sect. 20. That when any vacancy shall occur in the office of the Vice Chancellor, who shall be first appointed under the Act, it shall be lawful for her Majesty, by letters-patent, to appoint

a fit person, being or having been a barrister-at-law of fifteen years standing at the least, to supply such vacancy.

Sect. 21. But that nothing in the Act shall authorize the appointment of a successor to the Vice Chancellor secondly appointed under the Act. but not to the secondly appointed.

Sect. 22. That each such Vice Chancellor shall have full power to hear and determine all causes, matters, and things, which are or shall be at any time depending in the Court of Chancery in England, either as a Court of Law or Equity, or incident to any ministerial office of the said Court, or which have been or shall be submitted to the jurisdiction of the said Court, or of the Lord Chancellor, by the special authority of any Act *as the Lord Chancellor shall from time to time direct*; and all decrees, orders, and acts of such Vice Chancellor shall be deemed and taken to be respectively decrees, orders, and acts of the said Court of Chancery, or of such incident jurisdiction as aforesaid, or under such special authority as aforesaid, and shall have force and validity, and be executed accordingly, subject nevertheless in every case to be reversed, discharged, or altered by the Lord Chancellor; and no such decree or order shall be enrolled until the same shall be signed by the Lord Powers of Vice Chancellor. Decrees, &c. to be deemed decrees, &c. of the Court of Chancery.

Vice Chancellor not to discharge, &c. orders of any other Vice Chancellor, not being his predecessor in office, or any orders, &c. of the Lord Chancellor, unless authorized by him.

Chancellor. But no such Vice Chancellor shall have power to discharge, reverse, or alter any decree, order, act, matter, or thing made or done by any other Vice Chancellor to be appointed under the Act, not being a predecessor in office of such Vice Chancellor, nor any decree, order, &c. made or done by any Lord Chancellor, unless authorized by the Lord Chancellor so to do, nor any power to discharge, reverse, or alter any decree, order, &c. made or done by the Master of the Rolls or Vice Chancellor appointed in pursuance of the Act of the 53d Geo. 3, c. 24, nor any decree, order, &c. of the Court of Review in bankruptcy.

Vice Chancellor to sit in absence of Lord Chancellor, or in a separate court.

Sect. 23. That each or either of the Vice Chancellors to be appointed in pursuance of the Act shall sit for the Lord Chancellor whenever he shall require him so to do, and shall also at such other times as the Lord Chancellor shall direct sit in a separate court, for which purpose the Lord Chancellor shall make such orders as he shall think fit.

Vice Chancellor, if a Privy Counsellor, to be a member of the Judicial Committee.

Sect. 24. That every person holding or who shall have held the office of Vice Chancellor under this Act, shall, if a member of her Majesty's Privy Council, be a member of the Judicial Committee of the Privy Council.

Sect. 25. That the Vice Chancellors to be appointed in pursuance of the Act shall, during the continuance in office of the present Vice Chancellor, respectively have rank and precedence next to the Chief Baron of the Court of Exchequer; and that the Vice Chancellor to be appointed in pursuance of the act of 53 Geo. 3, c. 24, and the Vice Chancellors to be appointed in pursuance of this Act, shall, after the death of the present Vice Chancellor, or his resignation or removal, have rank and precedence next to the Chief Baron of the Exchequer, and as between themselves according to seniority of appointment.

Rank and
precedence of
Vice Chan-
cellor next
after the
Chief Baron
of the Ex-
chequer.

Sect. 26. That it shall be lawful for her Majesty by letters-patent to direct that each Vice Chancellor to be appointed in pursuance of the act shall have a secretary, usher and trainbearer, to be appointed and removed by such Vice Chancellor at his pleasure; and that the secretaries, registrars and other officers appointed to attend the Lord Chancellor shall attend each such Vice Chancellor when sitting for the Lord Chancellor, and also when sitting in his separate court, as circumstances shall require, and as the Lord Chancellor shall order and direct.

Secretary,
usher and
trainbearer.

Sect. 27. That each of the Vice Chancellors

Vice Chan-
cellor to hold

office during
good beha-
viour. to be appointed under the Act shall hold his
office during good behaviour.

To take oath. *Sect. 28.* And shall previous to his executing
any of the duties of his office take the oath set
forth in the Act.

Lord Chan-
cellor, with
concurrence
of Master of
the Rolls and
Vice Chan-
cellors, or *any*
two of them,
empowered
to make
orders, &c. *Sect. 29.* That after the appointment of the
Vice Chancellors under the Act, it shall be lawful
for the Lord Chancellor, with the advice or con-
sent of the Master of the Rolls and the Vice
Chancellors for the time being, or *any two of*
them (a), to do all such acts, and to make and
issue all such rules and orders as the Lord
Chancellor by any Act now in force is empow-
ered to do with the advice or consent of the
Master of the Rolls and Vice Chancellor, *or*
one of them.

Lord Chan-
cellor and
Master of the
Rolls may
direct causes,
&c. depend-
ing before the
latter to be
heard by the
Lord Chan-
cellor or any
Vice Chan-
cellor, &c. *Sect. 30.* That it shall be lawful for the Lord
Chancellor and Master of the Rolls from time
to time to direct that any causes or matters
which shall be at any time depending for hear-
ing or determination before the Master of the
Rolls for the time being, shall be heard and
determined by the Lord Chancellor, or by one
of the Vice Chancellors for the time being, and

(a) By the 3 & 4 Will. 4, c. 94, and the 3 & 4 Vict. c. 94, this
authority was given to the Lord Chancellor with the consent of
the Master of the Rolls and Vice Chancellor *or one of them.*

to direct that any causes or matters which shall be at any time depending for hearing before the Lord Chancellor shall be heard and determined by the Master of the Rolls; but all decrees and orders to be made by the Master of the Rolls or by any Vice Chancellor in pursuance of such direction to be subject to be reversed, discharged or altered by the Lord Chancellor.

Sect. 31. That the Lord Chancellor, Master of the Rolls and Vice Chancellors respectively shall have the same power to reverse, discharge or alter decrees or orders of the Court of Exchequer in suits and matters transferred by the Act to the Court of Chancery as they would have had if the same decrees or orders had been made by them respectively, or by their respective predecessors in office in suits or matters depending in the Court of Chancery; but any decree or order of the Master of the Rolls or one of the Vice Chancellors reversing, discharging or altering any decree or order of the said Court of Exchequer, shall be subject to be reversed, discharged or varied by the Lord Chancellor.

Sect. 32. That Richard Richards, Esq., the present accountant-general, and one of the Masters of the Court of Exchequer, shall be a Master in ordinary of the Court of Chancery, in addition to the present Masters of that

Power to
Lord Chan-
cellors to re-
verse, &c.
orders of the
Court of
Exchequer.

Appoint-
ment
of Richard
Richards,
Esq. to be
a Master in
Chancery.

Depending
references in
the Court of
Exchequer to
be transferred
to him.

Court ; and that all references which shall on the 15th of October, 1841, be depending before the Masters on the equity side of the Court of Exchequer shall be transferred by force of the Act to the said Richard Richards as a Master in ordinary of the said Court of Chancery, and such other references shall also be made to the said Richard Richards by the said Court of Chancery as the Lord Chancellor by any *general order* shall from time to time direct.

Her Majesty
empowered
to appoint
successors to
Mr. Richards.

Sect. 33. That upon the death, resignation, or removal of the said Richard Richards, or any of his successors, it shall be lawful for her Majesty by letters patent to appoint a proper person to supply such vacancy.

Neal Buck-
land, the pre-
sent clerk to
the Masters
in Exchequer
to be chief
clerk to Mr.
Richards.

Appointmen
of junior
clerk.

Sect. 34. That Neal Buckland, the present clerk to the Masters and accountant-general of the Court of Exchequer, shall be chief clerk to the said Richard Richards and his successors as Master in ordinary in Chancery, and that it shall be lawful for the said Richard Richards to appoint a junior clerk ; and that on any vacancies in such offices of chief clerk and junior clerk, such vacancies shall be supplied as vacancies in the offices of chief clerk and junior clerk to the Masters are now or may for the time being be supplied ; and such chief clerk and junior clerk shall perform all the same duties with respect to the receipt and payment of fees, and in all other

respects, as the chief clerks and junior clerks of the Masters in ordinary of the said Court of Chancery respectively now do or may for the time being perform.

Sect. 35. That out of the interest and dividends of the funds standing to the credit of the Suitors' Fund, there shall be annually paid the following salaries, viz. to each Vice Chancellor to be appointed under the Act the sum of 5000*l.*; to his secretary, 300*l.*; to his usher, 200*l.*; to his train-bearer, 100*l.*; and to the said Richard Richards and his successors 2500*l.*

Salaries of Vice Chancellors and their officers, and to masters, to be paid out of interest and dividends arising from Suitors' Fund.

Sect. 36. That it shall be lawful for her Majesty by letters patent to grant to any person executing the office of Vice Chancellor under the Act an annuity not exceeding 3500*l.* on his resignation. But no such annuity to be valid unless such Vice Chancellor shall have continued in his office, or in that office and in the office of a judge of one of the superior Courts of Common Law at Westminster, for the period of fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office.

Her Majesty empowered to grant an annuity to a Vice Chancellor on his resignation.

Period of service.

Sect. 37. That after the death, resignation, or removal of the present Vice-Chancellor, the

Regulating future salaries of Vice Chanc.

cellor appointed under 53 Geo. 3, c. 24.

salary payable to the Vice Chancellor for the time being appointed under the Act of 53 Geo. 3, c. 24, shall be reduced to the yearly sum of 5000*l.*, and the salary of his secretary to the yearly sum of 300*l.*

Number of registrars increased to ten. 3 & 4 Will. 4, c. 94.

Sect. 38. That after the 15th of October, 1841, there shall be ten registrars of the Court of Chancery; and that (subject to the provisions after contained) on the death, resignation, promotion, or removal of any of such ten registrars, other than the junior of the same registrars, the vacancy shall be filled up by the registrar next in seniority, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, or by the senior of the clerks to the registrars for the time being, to whom no such objection shall be made; and that on the death, &c. of the junior registrar the vacancy shall be filled up by the senior of the clerks to the registrars for the time being to whom no such objection shall be made.

Provisions for filling up vacancies.

Registrars to attend each judge of the Court as the Lord Chancellor, &c. shall direct.

Sect. 39. That the registrars shall attend the Courts of the Lord Chancellor, Master of the Rolls, and Vice Chancellors in such order and manner as shall be found most expedient, and as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors, or any two of them, shall by any general

order direct ; and that in case of illness, it shall be lawful for any of such registrars to appoint a deputy.

In case of illness they may appoint a deputy.

Sect. 40. That from the 15th October, 1841, there shall be twelve clerks to the said registrars ; and that (subject to the provisions after contained) on the death, resignation, promotion, or removal of any of such twelve clerks, other than the junior clerk, the vacancy shall be filled up by the clerk next in seniority, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, or by any person who, under the provision after contained, shall be eligible to the office of twelfth clerk, in case the twelfth clerk for the time being, but for some sufficient objection to the satisfaction of the Lord Chancellor, would have been the person to supply such vacancy.

Clerks to the registrars increased to twelve.

Vacancies to be filled up by seniority.

Sect. 41. That the Lord Chancellor shall appoint some proper person who shall have been admitted a solicitor or attorney of one of the Courts at Westminster, or who shall have served a term of *five years* to some solicitor or attorney of some one of the said Courts, to be 10th, 11th, and 12th clerk to the said registrars, and shall in like manner supply vacancies in the office of 12th clerk to the said registrars, whenever the same shall happen.

Lord Chancellor to appoint 10th, 11th, and 12th clerks, and to fill up vacancies in office of 12th clerk.

Lord Chancellor empowered to increase the number of clerks in registrars office.

Sect. 42. That if it shall hereafter appear to the Lord Chancellor that the business of the registrars office cannot be discharged with due despatch without more than twelve clerks, it shall be lawful for the Lord Chancellor to appoint one or more additional clerk or clerks.

Preserving rights of present registrars and clerks.

Sect. 43. That the present registrars and clerks to registrars shall have the same right of succession as they would have had under the 4 Will. 4, c. 94, in case this Act had not been passed.

Provisions as to succession of sworn clerks.

Sect. 44. That such of the present sworn clerks and side clerks of the Court of Exchequer as are hereby appointed registrars or clerks to the registrars, and Francis Robert Bedwell and Edward Dod Colville, junior, shall have the same right of succession to the offices of fourth registrar, seventh registrar, eighth registrar, tenth registrar, fifth clerk to the registrars, and 6th clerk to the registrars as under the said act of 4 Will. 4 they would have had to the offices of registrars appointed under the same Act in case four registrars only and three clerks to the registrars only had been appointed.

Office of Master of reports and entries.

Sect. 45. That the several registrars and clerks to the registrars shall, in the event of a vacancy in the office of Master of the reports and en-

tries, according to their seniority, be entitled to succeed to such vacancy; but the present registrars and clerks to the registrars shall have the same right of succession to the same office as they would have had under the said Act of 4 Will. 4 if this Act had not been passed.

Sect. 46. That the several clerks to the registrars appointed and to be appointed under this Act shall perform all such matters and things as are now done and performed by the clerks to the registrars of the said Court of Chancery, excepting so far as the same shall be varied by any rules or orders to be issued by the Lord Chancellor.

Duties of registrars and clerks.

Sect. 47. That it shall be lawful for the Lord Chancellor to appoint one or more person or persons, removeable at pleasure, for the purpose of keeping order in the Courts of the Vice Chancellors to be appointed under the Act.

Lord Chancellor may appoint persons to keep order in Courts.

Sect. 48. That the Masters, registrars and clerks appointed and to be appointed under the Act shall hold their offices during good behaviour.

Masters, registrars and clerks to registrars to hold their offices during good behaviour.

Sect. 49. That it shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice Chancellors for the time

Power to Lord Chancellor to remove officers, &c.

being, or any two of them, by any order to remove any of the officers holding office during good behaviour (except a Master in ordinary) for some sufficient cause in such order to be expressed ; and that any officer, clerk or messenger appointed under the 3 & 4 Vict. c. 94, shall be removed at the pleasure of the Lord Chancellor with the like concurrence.

3 & 4 Vict.
c. 94.

Provision for
certain ex-
penses and
salaries.

Sect. 50. That out of the interests and dividends of the funds standing to the credit of the Suitors' Fund there be paid the salaries and sums following, viz. such sums as the Lord Chancellor shall think reasonable to be paid to such persons as he shall in any order in that behalf name for work done, or monies expended in transferring the accounts to the books of the accountant-general of the Court of Chancery, and also the yearly salaries of 40*l.* to each person to be appointed to keep order in the Courts of the Vice Chancellors ; and also such sum or sums, not exceeding 5000*l.*, as the Lord Chancellor shall think reasonable for expenses to be incurred in alterations or improvements of the offices of the registrars, accountant-general and Masters of the said Court of Chancery, or any of the other offices of the same Court for the purpose of rendering the same fit for the convenient reception and occupation of the several additional officers to be appointed

under the Act; and also such annual sum or sums as the Lord Chancellor shall think reasonable for the rent of any buildings or rooms which may be taken for any officers of the Lord Chancellor or of the Court of Chancery.

Sect. 51. That so much of the Act of 4 Will. 4, c. 94, as directs the payment of salaries to the registrars and clerks to the registrars of the said Court of Chancery, shall, after the 15th of October, 1841, be repealed. Repeal of certain provisions of 3 & 4 W. 4, c. 94.

Sect. 52. That out of the fund standing to the credit of "The Suitors' Fee Fund" there be paid to the several officers named in the third schedule to the Act the several salaries or yearly sums set opposite to their respective names or titles in such schedules. Salaries to registrars, &c. to be paid out of the Suitors' Fee Fund.

Sect. 53. That out of the same funds there be paid to each of the registrars of the said Court of Chancery (other than the present six registrars), in addition to their respective salaries, the yearly sum of 100*l.* so long as such registrar shall be liable to the expense of copying the decrees and orders of the Court and the minutes of such decrees and orders; and to Frank Mylne, so long as he shall hold the office of the ninth clerk to the registrars, or either of Allowance to registrars for copying, &c.

the offices of eighth clerk or seventh clerk to the registrars, the yearly sum of 200*l.* in addition to his salary as such clerk.

Power to
Lord Chan-
cellor to
order retirin
g annuities to
Mr. Richards
and his suc-
cessors.

Sect. 54. That it shall be lawful for the Lord Chancellor by any order or orders to order an annuity, not exceeding 1500*l.* per annum, to be paid out of the interest and dividends of the funds standing to the credit of the Suitors' Fund to the said Richard Richards, or any of his successors in the office of Master in ordinary of the Court of Chancery, if and when the said Richard Richards or any of his successors shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same.

Officers
whose offices
are abolished
may make
claims for
compensa-
tion.

Sect. 55. That it shall be lawful for any officer of the Court of Exchequer, whose office will be abolished or affected by the Act, to make a claim for compensation within six months after the passing of the Act, to the Commissioners of the Treasury and the Lord Chief Baron of the said Court for the time being, who are authorised to fix the amount of the annual compensation which shall seem to them to be just and reasonable for the loss sustained by any such claimant.

Sect. 56. That it shall be lawful for the Lord Chancellor to order the payment of an annuity to be paid to any registrar, not exceeding two third parts of the yearly salary which such person shall under the Act be entitled to, if and when such person shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in the office of registrar and the office of clerk to the registrars for 40 years, and shall be desirous of resigning the same.

Power to Lord Chancellor to order retiring annuity to registrars.

Sect. 57. That every sum awarded by way of compensation or otherwise under the Act to the Hon. Robert Campbell Scarlett, shall cease to be payable when he shall succeed to the dignity of a peer of the united kingdom.

Compensation to Hon. Mr. Scarlett to cease when he shall become a peer.

Sect. 58. That if at the end of any year there shall be a surplus standing to the credit of "The Suitors' Fee Fund Account," after payment of the several salaries or sums of money charged by the Act, or by the said Act of 4th Will. 4, it shall be lawful for the Lord Chancellor to direct that the same shall be invested in the purchase of parliamentary or government securities, in the name of the accountant-general, and placed to an account, intituled, "An Account of Monies placed out to provide for the Officers of the High Court of Chancery;" and

Provision in case of surplus or deficiency of Fee Fund.

in case there shall be a deficiency, it shall be lawful for the Lord Chancellor to order the said accountant-general to make good such deficiency by carrying over a sum sufficient for the purpose out of the interest and dividends of the funds standing to the credit of the Suitors' Fund.

Investment
of surplus
interest.

Sect. 59. That the surplus interest and annual produce of the Suitors' Fund, beyond what shall be sufficient to answer the purposes of this and the several other Acts relating to such fund, shall be invested in the purchase of government or parliamentary securities, and placed to the credit of the said fund.

Money
placed out, if
required to
answer de-
mands of
suitors, to be
called in.

Sect. 60. That if at any time the whole or any part of the monies placed out on account of the Suitors' Fund shall be wanted to answer any of the demands of the suitors of the said Court of Chancery, the Court may direct the whole or any part of such monies to be called in.

Accountant-
general of
Court of
Chancery to
pay over 150*l.*
yearly to
Suitors' Fund.

Sect. 61. That the annual sum of 150*l.* being the average amount of brokerages received by the accountant-general of the Court of Exchequer, be paid by the accountant-general of the Court of Chancery to the credit of the Suitors' Fund.

Sect. 62. That it shall be lawful for the Lord Chancellor by any order or orders to authorise the change of any security or securities to be purchased in pursuance of the Act.

Power to
change
securities.

Sect. 63. That the accountant-general of the Court of Chancery shall annually cause to be laid on the table of the House of Commons a return showing the state of the several funds called "The Suitors' Fund," and "The Suitors' Fee Fund," and the charges on the same respectively.

Accountant-
general to
make certain
returns.

Sect. 64. That in the construction of the Act the expression, "Her Majesty" shall mean and include the heirs and successors of her Majesty; and the expression "Lord Chancellor" shall mean and include the Lord Chancellor, Lords Keeper, and Lords Commissioners for the custody of the great seal.

Interpreta-
tion clause.

Sect. 65. That in the construction of this or any other Act, the expression "barrister at law" or "barrister," shall mean a barrister at law called to the bar either in England or Ireland, except where it is otherwise expressly provided.

Meaning of
term "bar-
rister at law"
and "bar-
rister."

SCHEDULES.

The First Schedule referred to by the foregoing Act.

- Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the sheriffs of London, greeting: We command you that you omit not, by reason of any liberty, but that you enter the same and distrain the Governor and Company of the Bank of England by all their lands and chattels in your bailiwick, so that they, or any of them, do not intermeddle therewith until we otherwise command you; and that you answer us the issues of the said lands, so that they do appear before us in our High Court of Chancery on the day of , to answer a certain bill of complaint lately exhibited against them and other defendants before us in our said Court of Chancery by complainant; and further to do and receive what our said Court shall then and there order in the premises, and that you then leave there this writ. Witness ourself at Westminster, the day of , in the year of our reign.
DEVON.

The Second Schedule referred to by the foregoing Act.

	Cash.		
	£.	s.	d.
The King v. Anthill	225	0	0
Ambler, the Creditors of Ogle and Ambler's Account	369	13	1
Ashton.....	10	18	9
Butler, Samuel	5	0	0
Bennett.....	15	0	0
George Bennett	20	0	0
Delamotte.....	1065	17	10
Faithfull	5	0	0
Guy	10	0	0

	£.	s.	d.
The King v. Harrison	17	9	4
M'George	71	15	9
Mew the younger	5	0	0
Okey	23	14	0
Roper, the Creditors of Ogle, Roper, and Throp's Account	28	14	6
Charles Snow	92	18	0
Taylor	65	0	0
Turner	132	12	1
Weir	200	0	0
Kent	10	0	0
Whitworth	56	17	0
Norham Land Tax	17	9	8
The Queen v. Lane	1602	0	0
Holt	710	0	0

—♦—

The Third Schedule referred to by the foregoing Act.

Salary.

The first Registrar	2000 <i>l.</i> per annum.
The second, third, and fourth Registrars	1800 <i>l.</i> per annum each.
The fifth, sixth, seventh, and eighth Registrars	1500 <i>l.</i> per annum each.
The ninth and tenth Registrars	1250 <i>l.</i> per annum each.
The first and second Clerks to the Registrars	800 <i>l.</i> per annum each.
The third, fourth, fifth, and sixth Clerks to the Registrars	600 <i>l.</i> per annum each.
The seventh, eighth, ninth, and tenth Clerks to the Registrars	400 <i>l.</i> per annum each.
The eleventh and twelfth Clerks to the Registrars, and any additional Clerks to the Registrars to be appointed under this Act	300 <i>l.</i> per annum each.
The chief Clerk to the Master in Ordinary in Chancery appointed under this Act	1000 <i>l.</i> per annum.
The junior Clerk of such Master	150 <i>l.</i> per annum.

Custody of Infants.

As to the 2 & 3 Vict. c. 54, intituled, "An Act to amend the Law relating to the Custody of Infants."

The object of this Act was to enable Courts of equity to give access to mothers to their infant children, and, if it should be deemed advisable, to order that such children under seven years of age should be delivered into the custody of their mothers until they attain that age.

Judges in equity may make order on petition for access of mothers to their infant children; and if such children be within the age of seven years, for delivering of them to their custody until they attain that age.

Sect. 1 enacts, that it shall be lawful for *the Lord Chancellor and the Master of the Rolls(a)*, upon the petition of the mother of any infant or infants, being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father, if he shall see fit, to make order for the access of the petitioner to such infant or infants, at such times, and subject to such regulations as he shall deem convenient and just; and if such infant or infants shall be within the age of seven years, to make order that such

(a) In *re Taylor*, 10 Sim. 291, it was determined that the Vice Chancellor has jurisdiction to make orders under this Act, although the Lord Chancellor and Master of the Rolls are alone mentioned in it.

infant or infants shall be delivered to and remain in the custody of the petitioner until attaining such age, subject to such regulations as he shall deem just.

Sect. 2. That in all complaints made under the Act, the Lord Chancellor or Master of the Rolls may receive affidavits sworn before any Master in ordinary or Master extraordinary of the Court of Chancery, and that any person deposing falsely in such affidavits shall be deemed guilty of perjury.

Affidavits to be received, and parties deposing falsely, to be deemed guilty of perjury.

Sect. 3. That all orders under the Act may be enforced by process of contempt.

Orders may be enforced by process of contempt.

Sect. 4. But that no order shall be made under the Act whereby any mother against whom adultery shall be established by judgment in an action of *crim. con.* at the suit of her husband, or by the sentence of an ecclesiastical court, shall have the custody of or access to any infant.

Mothers against whom adultery established, not entitled to the benefit of the Act.

CHAPTER IV.

—◆—
The Acts of 11 Geo. 4 & 1 Will. 4, c. 40, the 11 Geo. 4 & 1 Will. 4, c. 46, the 11 Geo. 4 & 1 Will. 4, c. 47, the 11 Geo. 4 & 1 Will. 4, c. 60, the 4 & 5 Will. 4, c. 23, the 1 & 2 Vict. c. 69, and the 11 Geo. 4 & 1 Will. 4, c. 65(a).

—◆—
Undisposed of Residues.

—
As to the 11 Geo. 4 & 1 Will. 4, c. 40, intituled,
“An Act for making better Provision for the
Disposal of Undisposed of Residues of the Effects
of Testators.”

—
At law, before the passing of this Act, ex-
ecutors were entitled to the whole residue of

(a) This chapter contains a notice of the Acts usually denominated “Sugden’s Acts,” and of the Acts passed to explain or extend the provisions of certain parts thereof (except the 11 Geo. 4 & 1 Will. 4, c. 36, and the 2 Will. 4, c. 58, relating to commitment by Courts of equity for contempt and taking bills *pro confesso*, which have been before set forth). It has been deemed more convenient to arrange them in a great measure chronologically, although in point of importance the 11 Geo. 4, c. 47, and 1 Will. 4, c. 60, might perhaps be considered entitled to prior attention.

their testator's personal property undisposed of by his will ; but Courts of equity had determined that executors were only so entitled, in cases where it did not appear to have been their testator's intention to exclude them from the beneficial interest therein. The effect of this Act is to extend the principle thus recognised by Courts of equity, and to make them trustees of such residue for the person or persons (if any) who would be entitled to the testator's personal estate under the statute of distributions, if he had died intestate. It enacts,

Sect. 1. That when any person shall die after the 1st of September next after the passing of the Act, having by his or her will, or any codicil or codicils thereto, appointed any person or persons to be his or her executor or executors, such executor or executors shall be deemed by Courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions, in respect of any residue not expressly disposed of, unless it shall appear by the will, or any codicil thereto, the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

After the 1st September, 1830, executors to be deemed trustees of any residue undisposed of for persons entitled under the Statute of Distributions, unless otherwise directed by the will.

Sect. 2. But that nothing in the Act shall affect or prejudice any right to which any exe-

Not to affect rights of executors where

there is not
any person
entitled to
the residue.

cutor, if the Act had not been passed, would have been entitled, in cases where there is not any person who would be entitled to the testator's estate under the Statute of Distributions, in respect of any residue not expressly disposed of.

Sect. 3. That the Act shall not extend to Scotland.

Illusory Appointments.

As to the 11 Geo. 4 & 1 Will. 4, c. 46, intituled
"An Act to alter and amend the Law relating to
Illusory Appointments."

The object of this Act is to take away the jurisdiction assumed by Courts of equity of declaring void appointments made in exercise of powers where it was conceived the appointment was only illusory. Thus, where a power of appointment was given over a sum of money to a father in favour of his children, and he appointed only a very inconsiderable portion in favour of one or several of such children, Courts of equity considered that such an appointment was not according to the intention of the original donor, and therefore, although good at law, it

was held to be bad in equity. This Act restores the common law to its full force, and declares,

Sect. 1. That no appointment, which after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only, shall be thereby appointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder or in default of such appointment take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

Illusory appointments not to be impeached in equity.

Sect. 2. But that nothing in the Act shall prejudice or affect any provision in any deed, will, or other instrument creating any such power, which shall declare the amount of the share or shares from which no object of the power shall be excluded.

Not to affect any deed, &c. declaring the amount of the share;

Sect. 3. Nor be construed to give any other validity, force, or effect to any appointment than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left

Nor to give any other effect to any appointment than the same would have had.

unappointed to devolve upon any object of such power.

Payment of Debts out of Real Estate.

As to the 11 Geo. 4 & 1 Will. 4, c. 47, intituled,
“An Act for consolidating and amending the
Laws for facilitating the Payment of Debts out of
Real Estate.”

The principal object of this Act was to extend the relief afforded to creditors against the real estate of their debtors. By the 3 & 4 Will. & M. c. 14, it was enacted, that creditors by bond and specialty might maintain their actions of debt against the heirs and *devisees* of obligors; and thus the remedy which before that statute enabled creditors to claim payment of their debts out of an estate in fee simple descended to an heir at law, was enlarged so as to give them the same right against a devisee. But that statute was held to apply only to bond debts and covenants for the payment of sums certain, and it did not afford any relief in cases where there happened to be no heir, the right of action given by it being only against the devisee and heir. The present Act removes both these defects, enabling creditors (sect. 3) to recover

upon bonds, covenants, *and other specialties*, and declaring (sect. 4) that if there be no heir actions may be maintained against the devisee. It also materially assists the remedies given to creditors both at law and in equity, by abolishing the right of parol to demur (*a*), and enabling Courts of equity to order infants to convey where estates are sold for the purposes of this Act.

The following are its principal provisions:—

By *Sect. 1*, the Acts of 3 & 4 *Will. & M. c. 14*, 6 & 7 *Will. 3, c. 14*, 4 *Anne, c. 5 (I.)*, and 47 *Geo. 3, c. 74*, are repealed.

Sect. 2. All wills and testamentary limitations, dispositions, or appointments concerning lands, &c., shall be deemed or taken (only as against such person or persons, bodies politic or corporate, and his and their heirs, successors, executors, administrators and assigns, and every of them, *with whom the person or persons making any such wills or testaments, limitations, dispositions, or appointments shall have entered into any bond, covenant, or other specialty, binding his, her, or their heirs*) to be fraudulent and void.

For preventing frauds on creditors by wills, &c. 3 & 4 *Will. & M. c. 14*, s. 2.

(*a*) As to the origin and effect of parol demurring, see p. 225, *post*.

Creditors
may recover
upon bonds,
&c.
3 & 4 Will.
& M. c. 14,
s. 3.

Sect. 3. And every such creditor may maintain his action of debt, *or covenant*, upon the said bonds, *covenants and specialties*, against the heir and heirs at law of such obligor or obligors, covenantor or covenantors, and such devisee and devisees, *or the devisee or devisees of such first-mentioned devisee or devisees*, jointly, by virtue of the Act.

If no heir,
against de-
visee.

Sect. 4. If there shall be no heir at law, actions may be maintained against the devisee solely.

Limitations,
&c. for por-
tions, &c.,
not affected.
3 & 4 Will. &
M. c. 14,
s. 4.

Sect. 5. Limitations, or appointments, devisees, or dispositions for portions, or just debts, not to be affected (a).

(a) Where there is a devise for the payment of debts, the case is taken out of the statute, and the creditor can come only as the will directs.—*Miller v. Horton*, 1 Cowper, C. C. 45; *Plunket v. Penson*, 2 Atk. 292; *Lingard v. Lord Derby*, 1 Bro. C. C. 311; *Earl of Bath v. Earl of Bradford*, 2 Ves. 577; and a charge for payment of debts being tantamount to a devise for the same purpose, the estate so charged will be deemed equitable assets.—*Bailey v. Elkins*, 7 Ves. 325; *Ball v. Harris*, 4 Myl. & Cr. 267. But if the devise for payment of debts does not provide for such payment in a practicable manner it does not take the case out of the statute.—*Hughes v. Doulben*, 2 Bro. C. C. 614.

Where an estate is devised generally for payment of debts, or subject to debts, simple contract creditors are entitled equally with creditors by specialty; and if any of the creditors by specialty have exhausted any part of the testator's personal estate

Sect. 6. Heir at law to be liable for any debt, or covenant, although he may sell the estate before action brought, and execution may be taken out upon any judgment obtained to the value of the land sold; but lands, &c. *bonâ fide* aliened before action brought shall not be liable to such execution.

Heir liable for debts, though estate sold before action.
3 & 4 Will. & M. c. 14,
s. 5.

Sect. 7. Where any action of debt or covenant upon any specialty is brought against the heir he may plead *rien per descent*.

Heir may plead *rien per descent*.
3 & 4 Will. & M. c. 14,
s. 6.

Sect. 8. Devisees to be liable in the same manner as heirs, notwithstanding the lands, &c. devised to them shall be aliened before the action brought.

Devisees liable, though lands aliened.
3 & 4 Will. & M. c. 14,
s. 7.

Sect. 9. Traders dying seised of or entitled to any lands, &c. not charged by their wills, or devised subject to payment of debts, and which would be assets for payment of specialty debts, the same shall be assets to be administered in Courts of equity for the payment of all their just debts, as well simple contract as

Traders' estates to be assets to be administered in equity.
47 Geo. 3, c. 74, s. 1.

in satisfaction of their debts, they cannot receive any further satisfaction out of the testator's real estate, constituting equitable assets, until the simple contract creditors are placed *pari passu*.
Girling v. Lee, 1 Vern. 63; *Plunket v. Penson*, 2 Atk. 293.

specialty ; but creditors by specialty shall be paid first (a).

(a) By statute 3 & 4 Will. 4, c. 104, the provisions in this section are extended *totidem verbis* to all persons dying seized of or entitlel to lands, &c., so that now the real estate of persons dying indebted is rendered subject to *all* their debts, though specialty creditors have the priority.

The effect of these statutes is to render the heir and devisee liable to the same suits in equity, at the suit of a simple contract creditor, as they were before liable to at the suit of a special creditor, where the heir was bound. But the purchaser from an heir or devisee, being before the statutes bound to see to the application of his purchase-money, in satisfaction of legacies charged on the land by the devisor, notwithstanding the existence of specialty debts, which were to be paid out of the land ; and the statutes having made no difference in this respect, the purchaser from an heir or devisee is still bound to see to the application of his purchase-money in satisfaction of legacies charged on the land, where there is no prior charge for the payment of debts.—*Horn v. Horn*, 2 Sim. & Stu. 444.

Until lately it was considered doubtful whether the same principle was not applicable to a case where there was a charge in the will for payment of debts and legacies, and the purchaser *had notice* prior to the completion of his purchase, that all the debts had been paid, *Johnson v. Kennett*, 3 Myl. & K. 624 ; but in a recent case, in which the editor was counsel, Lord Langdale determined that where there is a general charge for payment of debts, legacies, and *even annuities*, the purchaser is not bound to see to the application of his purchase-money, provided there were debts due from the testator at his death, though the purchaser have express notice that all such debts have been paid, for that the charge has reference to the state of things at the testator's death.—*Page v. Adam*, Rolls, July 30th, 1841 ; Leg. Obs. v. 22, p. 427.

This decision, it is conceived, has materially weakened the

Sect. 10. Where any action, suit, or other proceeding for the payment of debts or any other purpose, shall be commenced or prosecuted by or against any infant under twenty-one, either alone or together with any other person or persons, the parol shall not demur, but such action, suit, or other proceeding shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of the Act be carried on or prosecuted by or against any infant, where according to law the parol did not demur (a).

Parol shall
not demur
by or against
infants.

authority of *Horn v. Horn*, *supra*, for the statutes 1 Will. 4, c. 47, and 3 & 4 Will. 4, c. 104, having in effect created a general charge for payment of debts, there do not appear to be any stronger grounds for requiring a purchaser to see to the application of his purchase-money in a case where the charge is created by the statute, than where it is created by the testator.—See also *Eland v. Eland*, 4 Myl. & Cr. 427.

(a) With reference to this section, it is to be observed, that the practice of giving a day to an infant to show cause against a decree after he comes of age, is not affected by the Act. This practice and that of parol demurring are so often confounded together, and treated as synonymous, although a material difference has always existed between them, that it may be useful to give a short explanation of the origin of parol demurring, and to show in what cases the practice of giving a day has been distinguished from it, and is still retained.

By the feudal law, during the subsistence of wardships, the estate of the heir in chivalry was during his minority in the

Infants may
be directed
to convey.

Sect. 11. Where any suit hath been or shall be instituted in a Court of equity for payment

hands of the guardian, who took the whole profits of it to himself; when therefore an action was brought against an infant heir, he was entitled to pray the parol to demur, which was a plea of nonage, in stay of the creditor's action, and the effect of it was to suspend all proceedings till the infant's full age. This plea was allowed not merely on account of his inability to defend himself by reason of his infancy, but from an absolute deficiency of funds arising out of the feudal tenures. The privilege came to be extended to other heirs besides those in chivalry, but in what manner is now unknown, its history being lost in antiquity. So where there were several heirs at common law, and one an infant, the parol would demur as to all; because as all were to contribute, it would have been hard that the adults should plead, and have judgment and execution against them, when they could not have contribution from the infant.—*Com. Digest Pleader*. So in Co. Litt. 290 a, it is said, "If a man have judgment against him for debt, &c. and dieth, his heir within age, or having two daughters, and the one within age, no execution shall be sued of the lands by *elegit* during the minority, although the heir be not specially bound, but charged as *terretenant*;" and moreover in some cases the parol would demur even against the infant, as where a naked right in fee descended from any ancestor to an infant, in an action ancestral by the infant heir, the parol was entitled to demur.—*Plaskett v. Bosby*, 4 East, 491.

As equity follows the law, the same privilege was recognised in Courts of equitable jurisdiction; and although in some measure affected by the 47 Geo. 3, c. 74, in favour of creditors of a testator who was a trader, and liable to the bankrupt laws, it was not materially infringed upon until the passing of the 1 Will. 4, c. 47; but by the next section (sect. 11) of the latter

of any debts of a person deceased, to which his heir, or devisee, may be liable, and such

Act it will be seen that Courts of equity are empowered, in cases where decrees shall be made for the sale of estates liable to the payment of debts, to direct infant heirs to convey.

The effect, then, of this statute is to prevent a total suspension of proceedings affecting the interests of infants at law or in equity, by parol demurring, but except in the instances specially provided for by the 11th section, the privilege recognised by Courts of equity, of allowing the infant a day, remains untouched. We are now, therefore, to ascertain in what cases a day was given to infants where the parol, before the passing of this Act, did not demur, because in all such cases infants have the same right of supervision after they attain twenty-one, as they had when parol demurrer was in full force. The principal examples will be found in suits against infants for foreclosure and partition, for in these a day has always been given, although the parol might not demur; but it may also be stated, that in all cases where a conveyance is required from an infant heir, the same rule has been followed; see *Spencer v. Boys*, 4 Ves. 370; *Uvedale v. Uvedale*, 3 Atk. 117; *Price v. Carver*, 3 Myl. & Cr. 162; in the latter of which the distinction between parol demurring and giving a day is most clearly shown. The bill in that case was filed by an equitable mortgagee of copyhold property, and it prayed a foreclosure. At the hearing before the Chancellor, on the 8th of April, 1837, his Lordship made the usual decree for a foreclosure, but some of the parties interested in the equity of redemption, and who were defendants to the suit, being infants, a question arose in drawing up the decree whether they were to have a day to show cause against the decree when they should attain twenty-one. Lord Cottenham, after referring to the form of the decree, said: "That the defendants would have had a day to show cause, according to the course hitherto pur-

Court shall decree the estates liable to such debts, or any of them, to be sold for satisfaction

sued, is quite clear, the decree being both to foreclose and to procure a conveyance from the infants. But it is said, that the statute 11 Geo. 4 & 1 Will. 4, c. 47, s. 10, has altered the course of proceeding. That statute only enacts that the parol shall not in future demur. If the parol demurring and the giving a day to an infant be synonymous terms, then this statute has prohibited the giving a day in future; but if the terms be not synonymous, then the statute does not affect the practice in question in this case. I have always conceived that the parol demurred in equity in those cases only in which it would have demurred at law. The origin and limits of this course of law are well explained in *Plaskett v. Beeby*, 4 East, 491, and the cases there put of the parol demurring have no reference to the cases in equity in which a day is given to an infant to show cause; indeed the shape of the decree in the two cases is perfectly different. When the parol demurs in equity, nothing is done to affect the infant, but when a day is given the decree is complete, but the infant has a day given to show cause against it, and if he do not show good cause within the time specified, he is bound. In some cases, indeed, the distinction is most apparent, the Court deciding that the parol did not demur, and therefore making the decree, but giving the infant a day to show cause. In *Uvedale v. Uvedale*, 3 Atk. 117, Lord Hardwicke puts a case in which the parol could not have demurred, but the infant would have had a day given. So in *Chaplin v. Chaplin*, 3 P. Wms. 368, it was held that the parol did not demur, but the legal estate being in the son, could not have been got from him till twenty-one, and the decree must have given him a day to show cause. In *Fountain v. Cain*, 1 P. Wms. 504, there was a trust to pay debts, and the parol did not demur, but a day was given to the infant. *Powel v. Robins*, 7 Ves. 209, was a case in

of such debt or debts, and by reason of the infancy of any such heir or devisee, an immediate

which the parol demurred, and no sale was directed till the heir attained twenty-one. In *Pope v. Gwyn*, 8 Ves. 28, n.; 2 Dick. 683; the assets were held to be equitable and the parol did not demur, but a day was given to the infant heir. *Spencer v. Boyes*, 4 Ves. 370, was not a case of the parol demurring, but a day to show cause was given to the infant heir. All cases of foreclosure and partition, and all others in which a conveyance is required from an heir, except those in which the parol would demur at law, are cases in which a day is given, but the parol does not demur. Of all such cases the statute takes no notice, and affords no remedy for them, except that by the 11th section it enables the Court to take from the infant the legal estate of property decreed to be sold for the payment of debts, but for that purpose only. In all other cases in which a conveyance is required from an infant, the law remains as before, and the practice, therefore, must remain the same. There must be a decree for the infant to convey at twenty-one, and he must have a day to show cause as before.

In conformity with the principles established by the cases just referred to, and with the enactment contained in the section now under consideration, it has been held, that where a bill is filed by an equitable mortgagee for a sale of the mortgaged property, and a decree for sale is obtained, an infant heir, who is a defendant to the suit, is not entitled to the usual allowance of six months after he comes of age to show cause against the decree, although, as we have seen, he would still be allowed a day, if the decree were for a foreclosure instead of a sale.—*Scholefield v. Heafield*, 7 Sim. 669.

By the 30th of the General Orders of the Court of Chancery, made the 26th of August, 1841, in pursuance of the Acts of

conveyance thereof cannot be compelled, such Court may direct such infant to convey such estates so to be sold to the purchaser or purchasers thereof, and in such manner as the said Court shall think proper; and every such infant shall make such conveyance accordingly (a).

4 Vict. c. 94, and 4 & 5 Vict. c. 52, it is declared, that in all suits concerning real estates vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate or rents and profits parties to the suit. And by the 31st of the same orders it is also declared, that in suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party.

(a) In *Smethurst v. Longworth*, 2 Keen, 603, it was held, that this statute did not empower a Court of equity, even for the benefit of the infant heir, to direct a mortgage of his real estates for payment of the ancestor's debts to which it was liable; but now by stat. 2 & 3 Vict. c. 60, s. 1, Courts of equity are empowered to direct mortgages as well as sales of estates for the purposes above mentioned; and by sect. 2 of the same statute it is declared that the surplus (if any) of the money raised by any such sale or mortgage which shall remain after answering the purposes for which the same shall have been raised, and defraying all reasonable costs and expenses, shall be considered in all

Sect. 12. The Court may order persons having a life interest to convey the fee of lands, &c. where a decree shall be made under the Act for the sale thereof for the payment of debts (a). Persons having a life interest may be ordered to convey the fee.

Sect. 13. Act of 33 Geo. 2, made by the parliament of Ireland relating to debts due to bankers, not to be affected. 33 Geo. 2 (1.) not to be affected.

respects of the same nature, and descend in the same manner as the estate, or the lands, &c. so sold or mortgaged.

An infant devisee in tail may be ordered to convey under the above (11th) section.—*Penny v. Pretor*, 9 Sim. 135.

In a decree against the infant heir *for sale* of an estate subject to an equitable mortgage, a day is not to be allowed for the infant to show cause against the decree on attaining his majority—*secus*, in a decree of foreclosure. *Scholesfield v. Heafield*, 7 Sim. 669, see p. 229, *ante*. And if a sale take place under the decree, and the mortgagee having permission to bid, become the purchaser, the infant heir will be ordered to convey.—S.C. 8 Sim. 470.

An infant tenant in tail of estates directed to be sold for the payment of debts, will be ordered under this section to convey to a purchaser.—*Radcliffe v. Eccles*, 1 Keen, 130.

An application in a creditor's suit under the above section (11) for an infant heir or devisee to convey, must be made by petition and not by motion.—*Anon.* 1 Y. & C. 75.

(a) By the statute 2 & 3 Vict. c. 60, s. 1, the powers given by that Act and the 11 Geo. 4 and 1 Will. 4, c. 47, are declared to authorize the sales and mortgages above referred to to be made in cases where such tenant for life, or other person having a limited interest, or such first executory devisee, as above mentioned, is an infant.

Conveyances, &c. by Trustees, &c.

As to the Act 11 Geo. 4 & 1 Will 4, c. 60, intituled
“An Act for amending the Laws respecting
Conveyances and Transfers of Estates and Funds
vested in Trustees and Mortgagees, and for en-
abling Courts of Equity to give effect to their
Decrees and Orders in certain cases.”

Prior to the passing of this Act the law relating to conveyances by or on the behalf of infant or lunatic trustees and mortgagees, and of trustees out of the jurisdiction or refusing to act, was principally governed by the Act 6 G. 4, c. 74; but the powers of that Act were found to be wholly inefficient for many of the cases of daily occurrence requiring the assistance of a Court of equity. In *Dew v. Clark*(a) it was determined that the 6 Geo. 4, c. 74, applied only to trusts created by express declaration, and hence the numerous instances of constructive trusts were left in a state of uncertainty and suspense. Thus where an estate was sold, and the vendor died before conveyance, leav-

(a) 4 Russ. 514.

ing an infant heir, the Court of Chancery had no power to compel the heir to perform the contract, the heir not being deemed a trustee for the purchaser; but under the 11 Geo. 4 and 1 Will. 4, c. 60, the representatives of vendors, and also nominal purchasers, are deemed trustees, and may be ordered to convey, although infants, *after a decree for specific performance*.

In like manner tenants for life of settled property, contracted to be sold, may be directed to convey the fee-simple after a decree for specific performance.

This Act also contains an extremely valuable provision for enabling Courts of equity to appoint new trustees of charities on the death of the trustees in whom the charity estates may have been vested.

The sections of the Act which have extended the provisions of the 6 Geo. 4, c. 74, are the 12th, 14th, 16th, 17th, 18th, 19th, 22nd and 23rd.

The enactments to which it is important that general attention should be directed are the following:—

Sect. 1. By this section the former Acts relating to conveyances by infants or lunatic trustees are repealed.

Sect. 2 contains rules for the interpretation of the Act.

Committee of
lunatic trust-
tees or mort-
gagee, by
direction of
the Chancel-
lor, may con-
vey.
6 Geo. 4,
c. 74, s. 3.

By *Sect. 3* it is enacted, that where any person seised or possessed of any land(*a*) upon any trust, or by way of mortgage, shall be lunatic, the committee of the estate of such person, by the direction of the Lord Chancellor, may convey such land in the place of such trustee or mortgagee, to such person and in such manner as the Lord Chancellor shall think proper; and every such conveyance shall be as effectual as if the trustee or mortgagee being lunatic had been of sane mind, and had executed the same(*b*).

Lord Chan-
cellor may
direct com-

Sect. 4. Where any stock(*c*) shall be standing in the name of any person who shall be

(*a*) By the rules for the interpretation of the Act (*sect. 2*) it is declared, that the several provisions contained in it relating to land shall include any manor, messuage, tenement, hereditament, or real property of whatever tenure, and property of every description transferred otherwise than in books kept by any company or society, or any share thereof or interest therein.

(*b*) The Vice Chancellor has no jurisdiction under the Act to make any order in cases of lunatic trustees or mortgagees, beyond directing a reference to the Master in the first instance.—*Anon.* 5 Sim. 322.

(*c*) By the interpretation clause (*sect. 2*) the provisions re-

lunatic as a trustee or executor alone or jointly with any other person, or shall continue to be standing in the name of a deceased person whose executor shall be lunatic, or shall be otherwise vested in or transferable by any person who shall be lunatic for the benefit of some other person, the Lord Chancellor may direct the committee of the estate of any such lunatic to transfer or join in transferring such stock to or into the name of such person and in such manner as the Lord Chancellor shall think proper; and also to order such person appointed as aforesaid to receive and pay over, or join in receiving and paying over, the dividends^(a) of such stock in such manner as the said Lord Chancellor shall direct^(b).

mittee of
lunatic trustee of stock
to transfer
same and
receive dividends.
6 Geo. 4,
c. 71, s. 6.

lating to stock are directed to extend to any fund, annuity or security transferred in books kept by any company or society established or to be established, or to any money payable for the discharge or redemption thereof, or any share or interest therein, and those relating to a lunatic, to any idiot or person of unsound mind or incapable of managing his affairs.

(a) By the above clause all provisions relating to dividends are to extend to interest or other annual produce.

(b) Upon an application under this Act for a transfer of stock standing in the name of a lunatic trustee, the Lord Chancellor will not adopt the facts as found in the proceedings in a suit in the Court of Exchequer, but will require them to be ascertained by the usual reference.—*Re Prideaux*, 2 Myl. & Cr. 640.

Where two sums of 4000*l.* and 2500*l.* were assigned to three

Lord Chan-
cellor may
direct con-
veyance or
transfer be-
fore inquisi-
tion.
6 Geo. 4, c.
74, s. 4.

Sect. 5. Where any such person as aforesaid being lunatic shall not have been found such by inquisition, the Lord Chancellor may direct any person whom he may think proper to appoint for that purpose in the place of such last-mentioned lunatic, to convey or join in conveying such land, or to transfer or join in transferring(a) such stock, and receive and pay

trustees, two of whom had died, and the survivor was a lunatic, although not found so by inquisition, it was determined, after a reference to the Master, and a report finding the above facts, that new trustees might be appointed in place of the lunatic trustee, and an order was made that a person approved by the Master should assign the trust funds to such new trustees.—*Re Welch*, 3 Myl. & Cr. 293.

Should it be desirable to ascertain the principles upon which the Court acted previous to the passing of the recent statutes, the cases of *Sims v. Naylor*, 4 Ves. 360; *Ex parte Currie*, in *re Hubbard*, 1 Jac. & W. 642, may be referred to with advantage.

(a) By the interpretation clause (sect. 2) all provisions relating to a conveyance are declared to include any fine, recovery, release, surrender, assignment or other assurance, and all acts, deeds and things necessary for making and perfecting the same; and those relating to a transfer, any assignment, payment, or other disposition.

The Act was not intended to apply to cases in which the fact of the incompetency of the individual from whom a conveyance or transfer is sought is contested. Hence where a reference had been obtained to ascertain whether the trustee named in the petition was a lunatic, and whether he was a trustee within the meaning of the Act; and the Master found that he was not a lunatic, the Chancellor refused to interfere further, although the

over the dividends thereof; but where any sum of money shall be payable to such lunatic, no

report was objected to.—*In the matter of Michael Walker*, 5 Jur. 571; S. C. 1 Cr. & Phil. 147.

In the matter of Piggott, 2 Russ. & M. 683, the Lord Chancellor stated that the reference under this section ought to comprise the following points, viz. :—

1st. An inquiry whether the alleged trustee or mortgagee was an idiot, lunatic or of unsound mind, or incapable of managing his affairs; and if so,

2dly. Whether he was seised or possessed of the estate, &c. in the petition mentioned, or of any and what parts thereof, either alone or jointly with any other and what persons as a trustee or trustees, upon any and what trusts, or by way of any and what mortgage, and for whom, within the meaning of the Act.

3dly. Whether the alleged lunatic trustee or mortgagee took any and what beneficial interest therein.

4thly. Whether there was any and what power or authority under the deed or instrument by virtue of which the alleged lunatic became a trustee or mortgagee to appoint a new trustee or trustees; and if not, then

5thly. A direction to inquire and certify who was a proper person or persons to be appointed such new trustee or trustees in the room of _____; and also

6thly. To appoint a proper person to convey to such new trustee or trustees.

Seemle, the expenses of proceedings under this Act for the purpose of obtaining a re-conveyance of a mortgaged estate from a mortgagee of unsound mind, but not found such by inquisition, are to be borne by the mortgagor. *In the matter of Marrow*, 1 Cr. & Phil. 142.

After an order made on petition has been drawn up in conformity with the prayer of the petition, the Court will not allow the petition and order to be amended, but a new petition must be presented, praying that the order may be varied. *Id.*

such last-mentioned order shall be made if such sum of money shall exceed 700*l.*; and where any sum not exceeding 700*l.* shall be payable to such lunatic, and any such order shall be made, the Lord Chancellor shall direct to whom and in what manner the money so payable shall be paid.

Infant trustees or mortgagees may convey by direction of the Court of Chancery.
6 Geo. 4,
c. 74, s. 2

Sect. 6. Where any person seised or possessed of any land upon any trust or by way of mortgage, shall be under twenty-one, such infant may by the direction of the Court of Chancery convey the same to such person and in such manner as the Court shall think proper; and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been at the time of making or executing the same of the age of twenty-one years(*a*).

(*a*) The executors of a mortgagee in fee who had died intestate as to his real estate, leaving an infant heir, having in exercise of a power in the mortgage deed agreed to sell the estate, the heir was ordered, on a petition presented by the executors under this section, to convey the estate to the purchaser.—*In the matter of Kent*, 9 Sim. 501.

Where a decree for foreclosure and sale had been obtained by a mortgagee, who afterwards died, leaving an infant heir out of the jurisdiction, such infant heir was held to be a trustee within the meaning of the 6th, 8th and 18th sections.—*Prendergast v. Eyre*, 1 Lloyd & Gould, 11. See stat. 3 & 4 Will. 4, c. 23, and 1 & 2 Vict. c. 69, p. 260 to 266, *post*.

A testatrix directed certain funds to be transferred in the Bank

Sect. 7. Infant trustees, or mortgagees of land situated within the jurisdiction of the Courts of Lancaster and Durham respectively, or the principality of Wales, may convey by the direction of those Courts (a). Or of the Courts of Lancaster, &c. if land situate within duchy of Lancaster, &c.

Sect. 8. Where any person seised of any land upon any trust shall be out of the jurisdiction, or not amenable to the process, of the Court of Chancery, or it shall be uncertain where there were several trustees which of them was the survivor, or it shall be uncertain whether the trustee last known to have been seised as aforesaid be living or dead, or *if known to be dead, it shall not be known who is his heir* (b); or if any trustee seised as aforesaid, or the heir of any such trustee, shall neglect or refuse to convey such land for the space of twenty-eight days Where trustees out of jurisdiction, &c. or refuse to convey, Court may appoint a person to convey. 6 Geo. 4, c. 74, s. 5.

books into the names of A. B. and wife and their children, who were infants, for the benefit of A. B. and wife for life, with remainder to their children; this was done, and a suit being instituted for the performance of the trusts: Held, that the Court had no jurisdiction under the above Act to order the infants to transfer the fund into Court.—*Watts v Scrivens*, 1 Beav. 223.

(a) The powers given by the Act are not conferred upon the Courts of Chester, &c. except in this instance.

The Courts of Great Session in Wales, and the Courts of Session and of Exchequer in the county palatine of Chester, are abolished by the 1 Will. 4, c. 70, s. 14.

(b) By the interpretation clause (Sect. 2) all provisions relating to an heir are declared to include any devisee, or other real representative by the common law, or by custom, or otherwise; and those relating to an executor, any administrator, or other personal representative.

next after a proper deed for making such conveyance shall have been tendered for his execution by, or by an agent duly authorized by, any person entitled to require the same; then and in every or any such case the Court of Chancery may direct *any person whom such Court may think proper to appoint* for that purpose, in the place of the trustee or heir, to convey such land to such person and in such manner as the said Court shall think proper; and every such conveyance shall be as effectual as if the trustee seised as aforesaid or his heir had made and executed the same (a).

(a) In *Price v. Dewhurst*, 8 Sim. 617, it was held, that the object of this Act being to provide means for conveying the legal interest only in property, an assignment of a mortgage debt by the creditor is not within the Act, nor does the Act apply to conveyances out of the queen's dominions.

A. being seised of the equity of redemption of lands in N. and also of the legal estate, as heir to his father, to whom he had mortgaged the lands in fee, devised his estates in N. and elsewhere to trustees in trust to sell: Held, that the legal estate in the mortgaged property did not pass by the will, but on the death of the testator became vested in his heir-at-law, who was a trustee thereof within this Act.—*Ex parte Marshall*, 9 Sim. 555.

In *re Merry*, 1 Myl. & K. 678, it was held, that this statute can only be intended to apply to a *cestui que trust*, who is named in the instrument upon which his title depends, or to a person who claims directly under a *cestui que trust*, so named, as real or personal representative, or assignee; but In the matter of the *De Clifford estates*, 2 Myl. & K. 624, the decision in *Re Merry* was questioned, and a more extended construction given to the Act.

In a recent case before the Vice Chancellor, in which the

Sect. 9. Where any person possessed of any ^{Where} land for any term of years upon any trust shall ^{trustees of} ^{leasehold} ^{estates out of}

editor was counsel for the *cestui que trusts*, where one of two trustees appointed by a will was out of the jurisdiction, and the *cestui que trusts* were all named in the will, a petition was presented for the appointment of a trustee in the place of the trustee residing out of the jurisdiction, and it was asked that an order might be made in the first instance without the usual reference to the Master, upon the production of affidavits identifying the *cestui que trusts*, and verifying the fact of the trustee being out of the jurisdiction, but his Honor refused to make the order without a reference.—*In the matter of Tate*, Leg. Obs. v. 22, p. 237.

Where a person has been ordered, under this section, to convey trust property in the place of a refusing trustee, it is not necessary that he should execute a new deed reciting the order, but he may execute the deed tendered to the trustee, and it should be expressed in the attestation clause that he has executed it in the place of the trustee, in pursuance of the order.—*Ex parte Foley*, 8 Sim. 395.

This section relates to cases in which conveyances are to be made, not where sales are to be effected, and therefore where a testator devised certain freehold estates to his three sons in trust to sell, and, one of them being out of the jurisdiction, a petition was presented on behalf of the other two, praying that a new trustee might be appointed and conveyances executed for the purpose of vesting the estates in such new trustee, the Vice Chancellor refused the order, and said, that the course would have been to have sold, and then for the purchaser to have come for a trustee to convey.—*In re Down*, 2 Jur. 886.

The costs of any application under this Act will in most cases be paid out of the trust property.—*Prytharch v. Havard*, 6 Sim. 9.

But where a suit or petition has been rendered necessary through the improper conduct of the trustee, the Court will order him to pay the costs.—*Jones v. Lewis*, 1 Cox, 199; *Manners v. Charlesworth*, V. C., April 15, 1833.

It was held, that this section related to trusts only, and not to

jurisdiction,
&c. or refuse
to assign, &c.
Court may
appoint a
person to
assign, &c.

be out of the jurisdiction of, or not amenable to, the process of the Court of Chancery, or it shall be uncertain whether the trustee last known to have been possessed as aforesaid be living or dead; or if any trustee possessed as aforesaid, or the executor of any such trustee, shall neglect or refuse to assign or surrender such land for the space of twenty-eight days next, after a proper deed for making such assignment or surrender shall have been tendered for his execution by, or by an agent duly authorized by, any person entitled to require the same; then and

mortgages, and consequently that mortgagees and their heirs were not within its provisions.—*Re Goddard*, 1 Myl. & K. 25; *Re Dearden*, 3 Myl. & K. 508; *Re Newman*, Law J. v. 13, p. 124.

But the statute 4 & 5 Will. 4, c. 23, s. 2, having assumed that the above section applied to mortgagees as well as trustees, and that the heir of a mortgagee, who was not known, was included in it, (see p. 261, *post*,) it has since been determined that mortgagees and heirs of mortgagees are within its provisions.—*Ex parte Whitton*, 1 Keen, 278; *Re Williams*, *Ex parte Bird*, 9 Sim. 642.

And even before the passing of the 4 & 5 Will. 4, c. 23, it was determined by Sir Edward Sugden, that the infant heir of a mortgagee, who had obtained a decree for sale, being out of the jurisdiction, was a trustee within the meaning of the Act.—*Prendergast v. Eyre*, 1 Lloyd & Gould, 11.

The statutes 4 & 5 Will. 4, c. 23, and 1 & 2 Vict. c. 69, have, however, removed all doubt upon the subject, (see pp. 260 and 264, *post*.)

The costs of the proceedings under these Acts for obtaining the reconveyance of a mortgaged estate from the infant heir of the mortgagee must be paid by the mortgagor.—*Ex parte Ommaney*, 5 Jur. 647.

in every such case the Court of Chancery may direct any person whom such Court may think proper to appoint for that purpose, in the place of the trustee or executor, to assign or surrender such land to such person and in such manner as the Court shall think proper; and every such assignment or surrender shall be as effectual as if the trustee possessed as aforesaid or his executor had made and executed the same.

Sect. 10. Where any person, in whose name Where trustees of stock are out of jurisdiction, &c. or refuse to transfer, Court may appoint a person to as a trustee or executor, (either alone, or together with the name of any other person), or in the name of whose testator, (whether as a trustee or beneficially), any stock shall be standing (a), or

(a) In *Re Anderson*, 1 Lloyd & G. 27, it was determined, that the Act did not extend to a case where the survivor of two trustees, in whose name certain stock was standing, died abroad intestate, and there was no power in the settlement to appoint new trustees; but that a bill must be filed for the purpose of having new trustees appointed, and that as such bill was necessary the powers of the Act would not be exercised, although the trust property consisted partly of land, and the heir of the surviving trustee was in the East Indies. But in *Ex parte Hagger, Re Merry's trust*, 1 Beav. 98, where the trustees of a trust fund had all died, and there were two executors of the survivors of such trustees, one of whom was out of the jurisdiction, and the other refused to prove the will, it was held, that the case was within the Act, and the Master of the Rolls, on the authority of *Ex parte Winter*, *infra*, made an order for the usual reference.

In *Ex parte Winter*, 5 Russ. 284, the executor of a surviving trustee appointed three executors, who in an adverse litigation

transfer.
6 Geo. 4,
c. 74, s. 7.

any other person who shall otherwise have power to transfer, or join with any other person in transferring, any stock to which some other person shall be beneficially entitled, shall be out of the jurisdiction of, or not amenable to, the process of the Court of Chancery, or it shall be uncertain whether such person be living or dead; or if any such trustee or executor, or other person, shall neglect or refuse to transfer such stock, or receive and pay over the dividends thereof to the person entitled thereto, or to any part thereof respectively, or as he shall direct, for the space of thirty-one days next after a request in writing for that purpose shall have been made to any such trustee or executor, or other person, by the person entitled as aforesaid, the Court of Chancery may direct such person as the said Court shall think proper to appoint for that purpose, in the place of such trustee or executor, or other person, to transfer or join in transferring such stock to or into the name of such person and in such manner as such

procured probate of his will to be decreed to them, but afterwards refused to take out probate: Held, that they were legal personal representatives of the surviving trustee within the meaning of 6 Geo. 4, c. 74, and an order would be made for the transfer of stock standing in the trustee's name.

An affidavit, that they refuse to take out probate, is not sufficient to ground an order under the Act; it should state that they refuse to take the steps necessary for enabling them to transfer.

Court shall direct, and also to order any person appointed as aforesaid to receive and pay over, or join in receiving and paying over, the dividends of such stock, in such manner as the said Court shall direct; and every such transfer, receipt, and payment shall be as effectual as if the said trustee or executor, or other person, had transferred or joined in transferring such stock, or had received and paid or joined in receiving and paying the said dividends (a).

(a) In *Ex parte Dover*, 5 Sim. 500, where the testator, who died in 1816, by his will gave an annuity to his widow and the residue of his estate to his children, appointing C. and D. his executors, a petition was presented in July, 1834, by the widow and children, stating the above facts, and that the executors, as appeared by their accounts, which had been passed at the Stamp Office, had long since paid the testator's debts and legacies, and had out of his personal estate purchased 8333*l.* three per cent. annuities, as a fund for payment of the annuity; that C., one of the executors, in 1830 emigrated to and settled in America, and that D. died in June, 1834; and, therefore, praying that a new trustee might be appointed in the place of C., to whom the stock might be transferred, the usual reference was granted, and the Master having found the facts as stated, an order was made for transferring the stock to the new trustee, and for paying the accrued dividends to the widow.

In *Ex parte Shick*, 5 Sim. 281, which was a petition by a married woman who had been separated from her husband fourteen years, and who was entitled to certain property held in trust for her separate use, an order was made, *without reference*, for the appointment of a new trustee in the place of one who had emigrated to America, on the ground of the petitioner being the only person interested in the trust property.

And so where one of two executors appeared from the pro-

All orders
under the
Act to be
made upon
petition.
6 Geo. 4, c.
74, s. 8.

Sect. 11. Every direction or order to be made in pursuance of this Act by the Lord Chancellor, or by the Court of Chancery, or by any other Court hereinbefore mentioned, shall be signified by an order to be made in any cause

ceedings in the cause to be a trustee, within the meaning of the Act, of a fund standing in the testator's name, and it being proved by affidavit that he was living out of the jurisdiction, the Court, without a reference to the Master, made an order for the transfer of the fund by his co-executor.—*Parker v. Burney*, 1 Beav. 492.

But there must be a clear case of trust to justify the Court in acting under this and the next section.—*Crouch v. Crouch*, 2 Jur. 773.

The Court cannot direct the officer of the Bank to pay the dividends on stock standing in the name of a trustee out of the jurisdiction, to the person or persons from time to time beneficially entitled to such dividends; but may direct funds to be transferred or dividends paid by the officer of the Bank to a new trustee appointed in the place of the trustee out of the jurisdiction.—*Re King*, Law J. Rep. (N. S.) Chanc. v. 9. p. 257.

A petition for a new trustee was presented by a married woman who was tenant for life under a will of certain stock to her separate use, with remainder to her children, as she should appoint, and in default of appointment, to her next of kin. She was also appointed executrix, with two other persons who were trustees of the fund. She had been deserted by her husband, and upon application to the Bank of England for a transfer, they objected, that being a married woman, the concurrence of her husband was necessary to a transfer. The Vice Chancellor said, the case was within the 10th section, as explained by the 22d, and made the order.—*Anon.* 2 Jur. 886.

The Master's report, under an order of reference made in pursuance of the Act, cannot be excepted to.—*Price v. Swan*, 2 Dick. 732; *Ex parte Swan*, 2 Dick. 749.

depending in such Court respectively, or upon petition in the lunacy or matter (a), and such person as hereinafter is mentioned shall be the petitioner, whether such person be or be not under any legal disability, (that is to say), if the same shall relate to a conveyance, transfer, receipt, or payment, to or in such manner as may be directed by any person beneficially entitled, then upon the petition of the person *or some one of the persons* beneficially entitled to the land, stock, or dividends, to be conveyed, transferred, received, or paid (b); and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed by virtue of some power or authority in some instrument creating or declaring the trusts of such land or stock, or by the Court of

(a) In *Fellows v. Till*, 5 Sim. 319, a decree having declared a defendant against whom the bill had been taken *pro confesso* to be a trustee of stock for the plaintiffs, application was made for a reference to the Master to appoint a person to transfer the stock in the place of the defendant, but the Vice Chancellor refused to make an order for the purpose, except on a petition presented under the Act.

It is not necessary to intitle the petition "In the matter of the Act, 1 Will. 4."—*Re Fowler*, 2 Russ. 449.

(b) The assignee of a portion of dividends arising from stock is within the meaning of this section, and therefore the grantee of an annuity, for securing which the life interest of the grantor in certain stock has been assigned, is entitled to petition, although the annuity may not exhaust the dividends.—*Re King*, Law Journ. Rep. (N.S.) Chancery, v. 9, p. 257.

Chancery, either alone or together with any continuing trustee, then upon the petition either of the trustee, or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the guardian or committee, or some or one of the guardians or committees of the person entitled to such monies if an infant or lunatic.

Lord Chancellor or Court of Chancery may direct a bill to be filed to establish the right.

Sect. 12. Where on account of the length of time which shall have elapsed since the creation or last declaration of a trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof, or if under other circumstances it shall appear to the Lord Chancellor or the Court of Chancery, or any other Court hereinbefore mentioned, not proper to make an order upon petition; such Lord Chancellor or any such Court may direct a bill to be filed to establish the right of the party seeking the convey-

ance or transfer, and upon the establishment by a decree of such right by the same decree, or any order in the cause, or in the lunacy, or both, to direct a conveyance or transfer to be made, according to the intent of this Act.

Sect. 13. Any committee, infant, or other person, directed by virtue of this Act to make or join in making any conveyance or transfer, or receipt, or payment, may be compelled by the order to be obtained as before mentioned, to make and execute the same in like manner as trustees of full age, and of sane mind.

Committees, infants, &c. may be directed to convey, transfer, &c. 6 Geo. 4, c. 74, s. 9.

Sect. 14. Where the person, or any of the persons to whom any money shall be payable in or towards the redemption or discharge of any mortgage or incumbrance, of which a release or conveyance shall be obtained under the powers of this Act, shall be an infant, the person by whom such money shall be payable, may pay the same into the Bank in the name and with the privity of the accountant-general of the Court of Chancery or of the Court of Exchequer, to be placed to his account in trust in any cause then depending in the said Court concerning such money, or if there shall be no such cause, to the credit of such infant, subject to the order and disposition of the said Courts respectively, or to such person or persons, or in

Mortgage-money belonging to infants to be paid into the Bank in such manner as the Court shall direct.

such other manner as the Courts respectively shall direct; and the said Courts may order any money which shall so be paid into Court to be invested in the public funds, and may order distribution thereof, or payment of the dividends thereof, as to the said Courts shall seem reasonable.

Persons to be deemed trustees notwithstanding they may have some beneficial interest, or some duty to perform.

Sect. 15. Every person being in other respects within the meaning of this Act shall be deemed a trustee within the meaning of this Act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but in every such case, and in every case of a mortgagee (not being a naked trustee), it shall be in the discretion of the said Lord Chancellor, or the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer unless by the decree to be made in such cause, or until after such decree shall have been made (a).

(a) In *Hutchinson v. Stephens*, 5 Sim. 498, an order was refused upon a petition under this Act praying for a transfer of stock under the following circumstances: A. and B. claimed adversely a sum of stock standing in the names of A. and two other persons as trustees. A. filed an amicable bill to have the

Sect. 16. Where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, either having received the purchase money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the lifetime of such vendor, or after his decease (a), and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall on the face of the conveyance appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said Court either before or after the death of such nominal purchaser shall have declared such nominal purchaser to be a trustee for the real purchaser, then and in every

Where vendor has died and a decree has been obtained for specific performance, or where purchase has been made in the name of another without any declaration of trust, the heir of such vendor or nominal purchaser to be deemed a trustee within the Act.

rights and interests of himself and B. declared. A. was beyond sea, commanding a merchant vessel on a voyage to India. B. presented the petition, which prayed that the stock might be transferred into Court in the cause. His Honour, in refusing to make the order, said, he did not consider the plaintiff to be out of the jurisdiction, and that he thought the case was not within the meaning of the Act.

(a) After a decree in a suit for specific performance against the infant heir of a vendor, a petition must be presented under this Act for an order that the infant may convey to the purchaser, the costs of which application will be paid out of the purchase-money.—*Prytharch v. Havard*, 6 Sim. 9.

such case the heir of such vendor, or such nominal purchaser or his heir in whom the premises shall be vested, shall be deemed a trustee for the purchaser within the meaning of this Act.

Where estates are contracted to be sold and are afterwards devised in strict settlement, tenant for life may be ordered to convey after a decree for specific performance.

Sect. 17. Where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, having devised the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the Court of Chancery, the Court by whom such decree shall be made, may by the same or any other decree, or any decretal order, or upon petition in the cause, direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey the fee simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said Court shall think proper.

Act to extend to other constructive and resulting trusts.

Sect. 18. The several provisions before contained to extend to every other case of a constructive trust, or trust arising or resulting by

implication of law ; but in every such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee until after it has been declared by the Court of Chancery, in a suit regularly instituted in such Court, that such person is a trustee for the person so seeking a conveyance or transfer ; but this Act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor except in any case expressly provided for by the Act.

Sect. 19. Husbands of females trustees, mortgagees, &c. to be deemed trustees within the Act, whether under any disability or not.

Husbands of female trustees, &c. to be deemed trustees.

Sect. 20. The provisions of the Act for obtaining conveyances from lunatics to extend to all persons being lunatic who, by force of any law for payment of debts out of real estate, would or hereafter may be compellable to convey any land if of sound mind.

Provisions as to lunatics to extend to all persons compellable to convey.
6 G. 4, c. 74, s. 11.

Sect. 21. The Act to extend to cases of petitioners to the Court of Chancery in matters

Act to extend to petitions in cases of charity and

friendly societies.

relating to charities, or benefit or friendly societies (a).

In clear cases where creation of trust recent, &c. new trustees may be appointed on petition.

Sect. 22. Recites that cases may occur upon applications by petition under the Act for a conveyance or transfer, *where the recent creation or declaration of the trust, or other circumstances*, may render it safe and expedient for the Lord Chancellor or the Court of Chancery (as the case may require) to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts to appoint new trustees; and enacts that in any such case the Lord Chancellor or the said Court of Chancery may appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under the Act, after hearing all such parties as the said Court shall think necessary, and thereupon a conveyance or

(a) In *Ex parte Norrish*, Jac. 162, it was held that the Court had no jurisdiction in the case of a friendly society which had ceased to act on the rules allowed and filed pursuant to the statute. This was an application by petition under the 33 Geo. 3, c. 54; but the same principles, it is conceived, would govern an application by petition under this Act. See also as to the con-

transfer shall be made and executed according to the provisions of the Act (a).

struction of former similar Acts, *In re a Friendly Society*, 1 Sim. & St. 82, and *Ex parte Segears*, 1 Ves. & B. 497.

(a) Where the surviving trustee is out of the jurisdiction, the Court has power under this section to appoint new trustees, although there is in the deed creating the trust a power to appoint new trustees.—*Re Fauntleroy*, 10 Sim. 252; Chanc. R. 8. p. 367.

In *Ex parte Shick*, 5 Sim. 282, *ante*, p. 245, a new trustee was appointed without a reference, the petitioner being the only person interested in the property; and in *Ex parte Inkersole*, *in re Rix*, 2 Gly. & Jameson, 230, new trustees were appointed under the Act 6 Geo. 4, c. 16, s. 79, without a reference, the property being small, and an affidavit being produced to the Court that the proposed trustees were fit and proper persons, and were willing to undertake the trust.

But the Court will not appoint new trustees under this section except in plain cases, such as a recent trust created within ten years, or a simple trust for A. for her separate use for life, remainder to B. in fee, where the trustee has died or gone abroad, and no question can arise. Hence, where the trustee of a settlement who had never acted died, and his executors refused to act in the trusts, the Court refused under this section to appoint new trustees, there being no power in the settlement for the purpose, although it was suggested that the trust property was in danger of being lost.—*In re Nicholls*, 1 Lloyd & G. 17, Ca. temp. Sugden.

And so where the trustee had never accepted the trust, and refused to act (there being no power in the settlement to appoint new trustees), the Court would not make any order.—*Re Whitley*, 1 Lloyd & G. 23, Ca. temp. Sugden.

Nor where one of two trustees is dead, will the Court entertain a petition for the appointment of a new trustee in the place of such deceased trustee, unless some disability, as specified in the previous sections of the Act, is shown to exist.—*Re Fitzgerald*, 1 Lloyd & G. 20, Ca. temp. Sugden.

But in another case (*re Coyne*), where a petition was pre-

Court of
Chancery
may appoint
new trustees
of charities.

Sect. 23. Where all the persons in whom any land may have been vested in trust for any charity or charitable or public purpose shall be dead, the Court of Chancery may on petition of the persons administering such charities, or superintending such public purpose, or of any person on behalf thereof, direct any Master or other

sented alleging the death of the two trustees of the hereditaments, stock, &c. in the petition mentioned, and that the heir at law and personal representative was out of the jurisdiction of the Court, an order was made for the usual reference, that being one of the disabilities contemplated by the Act.

The construction of this section became the subject of much consideration in the Courts of equity in Ireland, in consequence of its having been (erroneously) supposed that Sir Edward Sugden, by his judgment in *re Fitzgerald*, had determined the only case of disability to which this section applied to be those specified in the 4th, 5th, and 6th sections, and the conclusion at which the equity judges there arrived was, that every case capable of being brought within the 8th section conferred a jurisdiction on the Court to appoint new trustees under the 22d section.—*Re Earl of Mayo*, 1 Lloyd & G. Ca. temp. Plunkett. The judgments of Sir Edward Sugden it will be seen are not opposed to this view, and indeed it is believed his opinion coincides with it; so that the result of the decisions on this section may be stated to be that any plain case where the trust is of recent creation, to which the 8th or either of the previous sections applies, may be made the subject of petition under this section. It may also be considered determined that cases where executors and trustees are living within the jurisdiction and are under no disability, or where there has not been an acceptance of the trust, are not within any of the provisions of the Act, and that the insecure nature of the property is no ground for the interference of the Court.—*Re Whitley*; *re Nicholls*; *re Fitzgerald*, *ante*; *Sugden's Acts*, by Jemmett, second edition, pp. 175 to 194.

officer of the said Court to cause two successive advertisements to be inserted in the London Gazette, and in one or more of the newspapers circulated in the county, city or place where such land shall be situated, giving notice that the representative of the last surviving trustee do within twenty-eight days appear or give notice of his title to such Master or other officer, and prove his pedigree or other title as trustee; and if no person shall appear to give such notice within such twenty-eight days, or the person who may appear or give such notice shall not within thirty-one days after such appearance or notice prove his title to the satisfaction of such Master or other officer, the said Court may appoint any new trustees for such charity or charitable public purpose; and such land may be conveyed to such new trustees by any person whom the said Court may direct for that purpose without the necessity of any decree(a).

Sect. 24. Where in any suit in the Court of Chancery it shall be made to appear to the Court by affidavit that diligent search and inquiry have been made after any defendant who is only a trustee to serve him with process, and

Court may make absolute decree in a suit where defendant, who is a mere trustee, cannot be found, but not so as to affect any beneficial interest he may have.

(a) The provisions in the above section are applicable to leasehold as well as freehold charity estates.—*Re Trustees, &c. of St. Antholine, London*, Law Journ. Chan. Rep. (N.S.) v. 7, p. 269.

that he cannot be found, the Court may hear such cause, and make such absolute decree therein against every person who shall appear to them to be only a trustee in the same manner as if such trustee had been duly served with process, and had appeared at the hearing ; but no such decree shall affect any such person or his representatives in respect of any estate, &c. which he shall have at the time of making such decree for his own use and benefit, or otherwise than as a trustee as aforesaid.

Costs of petitions, orders, &c. under the Act may be directed to be paid.
6 Geo. 4,
c. 74, s. 17.

Sect. 25. The Lord Chancellor and the Court of Chancery may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of the Act, to be paid and raised out of or from the land or stock, or the rents or dividends in respect of which the same respectively shall be made, or in such other manner as the said Lord Chancellor or Court shall direct.

Act to extend to all the king's dominions except Scotland and Ireland.

Sect. 26. The powers given by the Act to the Lord Chancellor of Great Britain to extend to land and stock within any of his Majesty's dominions, except Scotland and Ireland.

Powers may be executed by the Lord Chancellor of Ireland.

Sect. 27. And may be exercised in like manner by the Lord Chancellor of Ireland with respect to all land and stock in Ireland.

Sect. 28. The powers given by the Act to the Lord Chancellor of Great Britain and Ireland to be exercised in like manner by the Lord Keeper or commissioners of the great seal of Great Britain and Ireland.

And by the Lord Keeper and Lords Commissioners of the great seal of Ireland.

Sect. 29. The powers given the Court of Chancery in England to extend to land and stock within any of his Majesty's dominions except Scotland.

Powers given to the Court of Chancery to extend to land and stock in all the king's dominions except Scotland.

Sect. 30. And may be exercised in like manner by the Court of Exchequer.

And may be exercised by the Court of Exchequer.

Sect. 31. And by the Courts of Chancery and Exchequer in Ireland with respect to land and stock in Ireland.

And by the Court of Chancery and Exchequer in Ireland as to land and stock there.

Sect. 32. In all cases in which orders shall be made in pursuance of the Act for the transfer of stock, the person to be named in such order for making such transfer shall either be the committee of the estate of the person being lunatic in whose place such transfer shall be made, or a co-trustee or co-executor of the person in whose place such person shall be directed to transfer, or some officer of the company or society in whose books the same respectively shall be directed to be made; and where such transfer shall be directed to be

Who shall be named in the orders of the Court for making transfers.
6 Geo. 4, c. 74, s. 15.

made in the books kept by the Governor and Company of the Bank of England, such officer shall be the secretary or deputy secretary or accountant-general for the time being of the said governor and company or his deputy.

Act to be an
indemnity to
the Bank and
other com-
panies.
6 Geo. 4,
c. 74, s. 16.

Sect. 33. The Act to be an indemnity to the Bank and other companies.



Escheat of Trust Property.



As to the Act of 4 & 5 Will. 4, c. 23, intituled "An Act for the amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust" (a).



Sect. 1 recites, that great inconvenience has been found to result to persons beneficially entitled to real or personal property by the escheating or forfeiture thereof in consequence of the death without heirs, or the conviction for treason or felony of a trustee in whom or in whose name the same is vested, and declares that the provisions of the Act relating to land should extend to and include any manor, mes-

(a) For the decisions with reference to this statute, see notes of cases on sect. 8 of 1 Will. 4, c. 60, *ante*.

suage, tenement, hereditament or real property, whether freehold, customaryhold, copyhold or of any tenure whatever; those relating to chattels, to personal property of every description capable of being transferred or disposed of otherwise than in books kept by any company or society, or to any share thereof or interest therein; those relating to dividends, to interest or other annual produce; those relating to a conveyance, to any lease and release, surrender or other assurance of real property, including all acts and deeds necessary for making and perfecting the same; those relating to an assignment, to any surrender, delivery or other disposition of the personal property, and to all acts, deeds and things necessary for making and perfecting the same; those relating to a transfer, to any payment or other disposition of stock; those relating to an heir, to any devisee or other real representative, by the common law or by custom or otherwise; and those relating to an executor, to any administrator or other personal representative, unless there be something in the subject or context repugnant to such construction.

Interpreta-
tion of Act.

Sect. 2. Where any person seised of any land upon any trust, or by way of mortgage, dies without an heir, the Court of Chancery may appoint a person to convey such land in like

Where trustee or mortgagee dies without an heir, Court of Chancery may appoint a person to convey.

manner as is provided by the 1 Will. 4, c. 60, in case such trustee or mortgagee had left an heir, and it was not known who was such heir (a).

Lands, &c. vested in any trustee or mortgagee not to be escheated by reason of the attainder or conviction of such trustee or mortgagee.

Sect. 3. No lands, chattels or stock vested in any person upon any trust or by way of mortgage, or any profits thereof, to escheat or be forfeited to the king or to any corporation, lord of a manor or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but to remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

Act to extend to every case of trustee having some beneficial interest, or some duty to perform, and also to implied trusts.

Sect. 4. The several provisions of the Act to extend to every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law, or by construction of equity.

But not to prevent escheat of any beneficial interest.

Sect. 5. But not to prevent the escheat or forfeiture of any beneficial interest.

(a) The proper form of reference under this Act is, that the Master shall inquire whether the party through whom the property became escheated or forfeited was a trustee within the meaning of this Act and of the Act 1 Will. 4, c. 60.

Sect. 6. In all cases where, before the passing of the Act, any person possessed of or entitled to any land, chattels, or stock, or any right to or interest in any land, chattels, or stock, as a trustee thereof either in whole or in part, or jointly with some other trustee or trustees, shall have died without an heir, or been convicted of any offence whereby the said land, chattels, or stock have escheated or been forfeited, or have become subject to any escheat or forfeiture, such land, &c. to be subject to the order, control, and disposition of the Court of Chancery, for the use of the party beneficially interested therein, in such manner and subject to such orders of the Court, under the provisions of the 1 Will. 4, c. 60, as if such person so dead without an heir, or convicted as aforesaid, were out of the jurisdiction of, or not amenable to, the process of the Court. But the Act not to extend to any land, chattels, or stock now vested in any person by virtue of any grant thereof made subsequently to the time when such escheat or forfeiture first occurred, or to any land, chattels, or stock which more than twenty years prior to the passing of the Act shall have been actually vested in possession, or reduced into possession by the party entitled thereto by virtue of any such escheat or forfeiture.

Act to extend
to trustees
who have
died without
heirs, or been
convicted be-
fore the pass-
ing of it.

Conveyances by Devisees, &c. of Mortgagees.

As to the Act of 1 & 2 Vict. c. 69, intituled "An Act to remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees."

Sect. 1 recites, ss. 8 and 18 of 1 Will. 4, c. 60, and also s. 2 of 4 & 5 Will. 4, c. 23, and that doubts had arisen whether the provisions of those Acts extended to the cases after mentioned; and *enacts*, that where any person seised of any land by way of mortgage shall have died without having been in possession of such land, or in the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been, or shall be paid to his executor or administrator, and the devisee or heir, or other real representative, or any of the devisees or heirs, or real representatives of such mortgagee, shall be out of the jurisdiction, or not amenable to the process of the Court of Chancery, or it shall be uncertain, where there were several devisees or representatives, who were joint tenants, which of them was the survivor; or it shall be uncertain whether any such devisee or heir or representative be living or dead, or if known to be dead it shall not be known who was his heir; or

Court of Chancery may direct conveyance where devisees, or representatives of mortgagees, out of jurisdiction, &c. or where they refuse to convey.

where such mortgagee, or any such devisee or heir or representative, shall have died without an heir, or if any such devisee or heir or representative *shall neglect or refuse to convey* such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by, *or by an agent duly authorised* by, any person entitled to require the same; then and in every such case the said Court of Chancery may direct any person whom such Court may think proper to appoint for that purpose in the place of the devisee, heir, or representative (whether such devisee, heir, or representative shall or shall not have a beneficial interest in the money paid to the executor or administrator as aforesaid), to convey such land in like manner as by the said Act of 1 Will. 4, c. 60, the said Court is empowered to appoint a person to convey in the cases therein mentioned in the place of a trustee, or the heir of a trustee (a).

(a) Where a mortgagee was resident out of the jurisdiction, it was held that the case was not within either of the above acts.—*Green v. Holden*, 1 Beav. 207.

The Act of 1 & 2 Vict. c. 69 does not repeal any part of the Acts of 1 Will. 4, c. 60, and 4 & 5 Will. 4, c. 23, but applies only to the cases expressly provided for in it; and therefore the cases of a mortgagee dying leaving an infant heir, or where it is uncertain whether he left an heir, are not affected by the first of these acts.—*Re Wilson, Re Gathorne*, 8 Sim. 392.

In both these cases the mortgagees had died, and the mort-

Act to extend
to Ireland.

Sect. 2. The words used in the Act to have the same effect in England and in Ireland, and to embrace the same objects as they would have embraced if the provision thereinbefore contained had formed part of the recited Acts.

Recited Acts
not extended
to any case
of a deceased
mortgagee
not provided
for by this
Act.

Sect. 3. The recited Acts not to be construed to extend to any case of any person dying seised of any land by way of mortgage, other than such as are in this Act expressly provided for.



Infants, Femes Covert, Lunatics, &c.



As to the 11 Geo. 4 & 1 Will. 4, c. 65, intituled,
“An Act for consolidating and amending the
Laws relating to Property belonging to Infants,
Femes Covert, Lunatics, and Persons of unsound
Mind.”



The principal object of this Act was to extend the powers given by the 6 Geo. 4, c. 74, for enabling Courts of equity to grant leases of estates belonging to infants or lunatics, and to

gage money had been paid to their personal representatives. In the first it could not be discovered whether the mortgagee had left any heir, and in the second the heir of the mortgagee was an infant.

confer the same powers on those Courts for carrying into effect contracts entered into by lunatics previous to their disability, or by their committees subsequently, as were given to the guardians of infants by the Act of 1 Geo. 1, c. 10.

Power is also given to the Chancellor to order the transfer of stock standing in the name of any lunatic, or any committee who may have died intestate, or may himself have become lunatic, or who shall be out of the jurisdiction, or where it shall be uncertain whether he be living or dead, or he shall neglect or refuse to transfer such stock, and receive the dividends.

The following are its principal provisions:—

By *Sect. 1*, the several Acts of 11 Anne, c. Acts repealed 3, 9 Geo. 1, c. 29, 29 Geo. 2, c. 31, 11 Geo. 3, c. 20, 43 Geo. 3, c. 75, 47 Geo. 3, c. 8, s. 2, 59 Geo. 3, c. 80, 9 Geo. 4, c. 78, and so much of 6 Geo. 4, c. 74, as relates to funds belonging to stocks, funds, &c. belonging to infants, idiots, lunatics, or persons of unsound mind, are repealed.

Sect. 2, contains rules for the interpretation of the Act, by which it is declared that the Rules for interpreting the Act. provisions therein contained relating to land, shall extend to and include any manor, messuage, tenement, hereditament, or real property of whatsoever tenure, and to property of every

description transferable otherwise than in books kept by any company or society, or any share thereof, or charge thereon, or estate or interest therein ; those relating to stock to any fund, annuity, or security transferable in any books kept by any company or society, or to any money payable for the discharge or redemption thereof, or any share or interest therein ; those relating to dividends to interest or other annual produce ; those relating to the Bank of England, to the East India Company, South Sea Company, or any other company or society established, or to be established ; those relating to a conveyance to any release, surrender, assignment, or other assurance, including all acts, deeds, and things necessary for making and perfecting the same ; those relating to a transfer, to any asset, payment, or other disposition ; and those relating to a lunatic, to any idiot, or person of unsound mind, or incapable of managing his affairs.

Admission of
infants, &c. to
copyholds.
9 Geo. 1, c. 20,
s. 1.

Sect. 3. Infants, femes covert, and lunatics, may be admitted to copyhold estates by their guardian, committee, or attorney.

Femes covert
and infants
may appoint
attorneys.
9 Geo. 1, c. 20,
s. 1.

Sect. 4. Femes covert and infants having no guardians, may appoint attorneys for that purpose.

Sect. 5. In default of appearance of infant, feme covert, or lunatic, the lord may appoint an attorney.

And in default lord may appoint.
9 Geo. 1, c. 29, s. 1.

Sect. 6. Upon every admittance of infant, feme covert, or lunatic, the fine imposed to be demanded by the bailiff, or agent of the lord, by a note in writing signed by such lord or his steward, to be left with the guardian of such infant, or such infant if he have no guardian, or with such feme covert, or her husband, or with the committee of the estate of such lunatic, or with the tenant or occupier of the land; and if such fine be not paid or tendered, the lord may enter and receive the profits till he is satisfied; but the lord to account yearly; and

Lord may enter for fines if not paid.
9 Geo. 1, c. 29, s. 2.

Sect. 7. When the fines are satisfied, to deliver up possession to such infant, &c. who may enter and take possession.

Lord to deliver up possession when fines satisfied.
9 Geo. 1, c. 29, s. 3.

Sect. 8. Guardians or husbands, or committees paying fines may reimburse themselves out of the rents of the copyholds.

Guardians, &c. paying fines may reimburse them.
9 Geo. 1, c. 29, s. 4.

Sect. 9. No forfeiture to be incurred by infant, feme covert, or lunatic, for not appearing, or refusing to pay fines.

No forfeiture for want of appearance.
9 Geo. 1, c. 29, s. 5.

Sect. 10. Fines not warranted by the custom

Fines may be controverted,

9 Geo. 1, c. 29, s. 6. of the manor, or unlawful may be controverted.

Attorneys
may be ap-
pointed.

47 Geo. 3, c. 8, s. 2; 50 Geo. 3, c. 80.

Sect. 11. Persons empowered to appoint attorneys, &c. for surrendering copyholds, and other lands, &c. of which recoveries are intended to be suffered.

Court may
order surren-
der of leases
held by in-
fants, &c.
29 Geo. 2,
c. 31.

Sect. 12. Infants and their guardians, and femmes covert, or any persons on their respective behalves, may apply to the Court of Chancery by petition or motion, in a summary way, and obtain an order for surrendering leases to which such infants and femmes covert may be respectively entitled, and renewing them for the terms mentioned in the old leases, or otherwise as the Court shall direct.

And also by
committees of
lunatics.

Sect. 13. And committees of lunatics may in like manner apply to the Lord Chancellor for a similar order (a).

(a) The usage in lunacy, on granting leases of a lunatic's estate, is, that the committee pays the expense of the inquiry, and the lessee of the lease.—*Ex parte Prichett, Re Duches of Norfolk, a lunatic*, 3 Swanst. 130.

A lease renewed for the benefit of a lunatic's estate ought to be taken in the name of the lunatic, if it were so at the time of the lunacy, but if originally in trust for the lunatic, then to the committee.—*Ex parte Jermyn*, 3 Swanst. 131, n.

An Act of parliament having authorized the vicar of Camber-

Sect. 14. All fines, premiums, and charges for such renewals to be paid out of the estate, or charged thereon as the Court shall direct.

Fines for renewal to be paid out of the estate.

Sect. 15. Renewed leases to be held to the same uses as the old ones.

Renewed leases.

Sect. 16. Where any infant, or feme covert, might in pursuance of any covenant, or agreement, if not under disability, be compelled to renew any lease, such infant, or his guardian, or such *feme covert* may by direction of the Court of Chancery, to be signified by an order to be made in a summary way *upon the petition of such infant, or his guardian, or of such feme covert, or of any person entitled to such renewal*, accept of a surrender of such lease, and execute a new lease of the premises comprised in such lease for such term, &c. as was mentioned in the lease so surrendered, or otherwise as the Court shall direct.

Court may order renewals.

Sect. 17. Court of Chancery may empower infants, or their guardians, by order to be ob-

Court may order building or repair.

well to grant leases, *with the consent in writing of the patron, who was a lunatic*, on a petition by the committees of his person and estate, for a reference to the Master to inquire whether it would be fit that they on his behalf should consent to a lease, the Chancellor refused to make any order.—*Ex parte Smyth, Re Thomas Smyth, a lunatic*, 2 Swanst. 393.

ing leases of
infant's es-
tates.

tained in a summary way, to grant building, repairing, or improving leases of such infants' estates for such terms and subject to such rents as the Court shall direct(a); but no fine or premium to be taken and the best and most improved rent to be reserved. The leases to be settled by the Master and counterparts executed by the lessees, and deposited in the Master's office for safe custody till such infants attain twenty-one; but no lease to be made of the capital mansion house, and the park and grounds respectively held therewith, for any period exceeding the minority of any such infant.

New leases
may be exe-
cuted under
direction of
the Court
where lease
contains co-
venant for
renewal, and
parties out of
jurisdiction.

Sect. 18. Where any person legally bound to renew is out of the jurisdiction, the Court of Chancery may, by an order to be made *on the petition of any person or persons entitled to such renewal* (whether such person be or be not under any disability), direct such person as the Court shall appoint for that purpose, to accept a surrender of the subsisting lease, and execute a new lease in the name of the person who ought

(a) An estate, of which A. died seised in fee, descended upon A.'s five infant sisters. The father and mother of the infants being both living, and the estate of the sisters being consequently liable to be divested by the birth of a nearer heir of A., it was held that the infants were not seised of, or entitled to, the land in fee, within the meaning of this section.—*In the matter of Evans*, 2 Myl. & K. 318.

to have renewed the same ; but in every such case it shall be in the discretion of the Court to direct a bill to be filed to establish the right of the party seeking the renewal, and not to make the order for such new lease unless on decree in the cause.

Sect. 19. Committees of lunatics may, by direction of the Lord Chancellor, to be signified by an order to be made in a summary way upon the petition of such committees, or of any persons entitled to renewal, accept of surrenders of old leases, and execute new leases upon such terms as were mentioned in the leases so surrendered, or otherwise, as the Lord Chancellor by such order shall direct ; this provision to extend as well to cases where lunatics shall not be compellable to renew, as to cases where renewals might be effectually enforced against them if of sound mind.

Committees of lunatics may grant new leases when old lease contains a covenant for renewal.

Sect. 20. Fines and covenants for renewals to be paid and performed previous to such renewals, and counterparts to be executed.

Fines, &c. to be paid previous to renewals ;

Sect. 21. Fines, &c. for such renewals to be disposed of for the benefit of the parties respectively entitled thereto, in such manner as the Court shall direct ; but on the death of a lunatic, all sums remaining undisposed of on

And to be disposed of as the Court may direct.

account of any such fines, to be considered as between the representatives of the real and personal estates of such lunatic, as real estate, unless such lunatic shall be tenant for life only, and then as personal estate.

11 Anne, c. 3, (1.) unaltered. *Sect. 22.* The Irish Act of 11 Anne, c. 3, to continue unaltered.

Power of leasing lands, &c. of lunatics may be executed by committee under direction of the Court. *Sect. 23.* The power of leasing lands, &c. of lunatics, having only a limited estate therein, may be executed by the committee under the direction of the Chancellor.

Committees of lunatics may be directed to make leases. *Sect. 24.* Where lunatics are seised of freehold or copyhold estates in fee, or in tail, and an absolute interest in leasehold estates, the Chancellor may direct the committee of the estate to make leases thereof, when such leases shall appear beneficial to the estate (a).

Part of Act 1 Geo. 1, c. 10, repealed. *Sect. 25.* So much of the 1 Geo. 1, c. 10, as enacts that agreements of guardians shall bind infants, repealed.

(a) In *Re Starkie, Ex parte Clayton*, 3 Myl. & K. 247, it was determined, that this section did not give the Court of Chancery jurisdiction to authorize the committee of the estate of a lunatic tenant in tail in possession to grant leases for twenty-one years, so as to bind the remainder man.

Sect. 26. Guardians of infants with the approbation of the Court of Chancery, and committees of lunatics with the approbation of the Lord Chancellor, such approbation to be signified by an order to be made in a summary way, on the petition of such guardian or committee, may enter into agreements in the same manner as if the 1 Geo. 1, c. 10, had not been repealed.

Guardians of infants and committees of lunatics may enter into agreements.

Sect. 27. When any person who shall have contracted to sell, mortgage, &c. any land shall afterwards become lunatic, and a specific performance of such contract shall have been decreed *either before or after* such lunacy, the committee of such lunatic may, by direction of the Lord Chancellor, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, convey such land, in pursuance of such decree, to such person and in such manner as the Lord Chancellor shall direct, and the purchase-money shall be paid to the committee (a).

Committees of lunatics may convey after decree for specific performance.

(a) The Lord Chancellor cannot, by an order in lunacy, make an absolute title to the lunatic's leasehold estate.—*Ex parte Dikes*, 8 Ves. 79.

In *Ex parte Warren*, 9 Ves. 609, 610, where a contract for sale of an estate was entered into by a party who was afterwards found lunatic with lucid intervals, on a bill being filed for specific performance, an issue was directed to try whether the defendant was a lunatic at the time he executed the contract, and

Court may direct estates of lunatics to be sold or mortgaged for payment of debts.

Sect. 28. The Lord Chancellor may order the estates of lunatics to be sold or charged by mortgage for raising money for payment of debts and incumbrances, and the costs of the commission, and of such sales, charges, and incumbrances, in such manner as the Chancellor shall direct; and to direct the committees of their estates to execute, in the place of such persons respectively, conveyances of the estates so to be sold, &c. and to do all necessary acts, as the Lord Chancellor shall direct (a).

if so, whether he had lucid intervals, and whether the contract was executed during a lucid interval, the Court observing, that all acts done during a lucid interval are to be considered done by a person perfectly capable of contracting, managing, and disposing of his affairs at that period.

(a) Where a lunatic, who had no issue, was seised of an estate tail in possession, with the immediate reversion to himself in fee, and the land had been sold under this Act for payment of his debts, an order was made on the committee to suffer a recovery on behalf of the lunatic, in order to complete the title to a purchaser.—*Re Brand*, 1 Myl. & K. 150.

In *Ex parte Hastings*, 14 Ves. 182, it was held that no order would be made, on a petition in lunacy, for the payment of the lunatic's debts out of funds not within reach of his creditors, except for his accommodation, and it clearly appeared he would have a sufficient maintenance.

By 3 & 4 Will. 4, c. 74, s. 33, the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, or other persons intrusted with the jurisdiction in lunacy, are constituted protectors of settlements in the place of lunatics for the purposes of that Act; and power is given to the Lord Chancellor to consent to a disposition by a tenant in tail, and to make such orders as may be thought necessary in cases under this Act.

Sect. 29. The surplus monies which shall remain after answering the purposes aforesaid, to be of the same nature and character as the estate sold, mortgaged, &c. (*a*). Surplus monies to be of the same nature as the estate sold, &c.

Sect. 30. The Act not to subject estates of lunatics to debts, otherwise than they are now subject by law. Lunatics' estates not to be further charged.

Sect. 31. Every surrender, lease, &c. made and executed, under the Act, to be as valid as if the person on whose behalf the same shall be made or executed had been of full age, unmarried, or of sane mind, and had made or executed the same; and every such surrender and lease respectively, made and accepted by or on the behalf of a feme covert, to be valid, without any fine being levied by her. Surrenders of leases, &c. under the Act, to be valid.

Sect. 32. The Court of Chancery may, by an order to be made on the petition of a guardian of any infant in whose name any stock shall be standing, or any sum of money by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, *or if there shall be no guardian, by an order to be made in any* Court may order dividends, &c. of infants' estates to be applied for maintenance.

(*a*) The residue of a lunatic's property, after payment of his debts, was ordered to be invested in a government annuity for his maintenance, upon the Master's report, that it would be for his benefit.—*Ex parte Stonard*, 18 Ves. 285.

cause depending in the said Court, to direct all or any part of the dividends to be applied for the maintenance and education, or otherwise, for the benefit of such infant.

Lord Chancellor may appoint a person to transfer stock belonging to a lunatic, where committee dead, intestate, or out of the jurisdiction, &c.

Sect. 33. Stock belonging to lunatics, or vested in any person, being committee of the estate of a person found lunatic, in trust for or as part of his property, and such committee shall have died intestate, or shall himself become lunatic, or shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery, or it shall be uncertain whether such committee be living or dead, or such committee shall neglect or refuse to transfer such stock, and to receive or pay over the dividends thereof to a new committee, or as he shall direct, for the space of fourteen days next, after a request in writing for that purpose from such new committee, the Lord Chancellor may, upon the petition of the committee of the estates of such lunatic, or of the person reported by the Master to be a proper person for such committee, although such report shall not have been confirmed, direct such person as the Lord Chancellor shall think proper to appoint to transfer, &c.

Lord Chancellor may direct transfer to curator.

Sect. 34. Where stock shall be standing in the names of lunatics residing out of England, the Lord Chancellor may direct the transfer to any curator, or other person.

Sect. 35. All costs may be directed to be raised and paid out of the land or stocks respecting which the same shall have been incurred.

Costs to be raised.

Sect. 36. The powers given to the Court of Chancery in England to extend to land and stock within any of his Majesty's dominions, except Scotland.

Act to extend to any of the King's dominions, except Scotland.

Sect. 37. And may be exercised in like manner by the Court of Exchequer.

Powers in Act to extend to Court of Exchequer.

Sect. 38. And by the Courts of Chancery and Exchequer in Ireland, with respect to land and stock in Ireland.

Powers to be exercised by Court of Chancery in Ireland, when property in Ireland.

Sect. 39. The powers given to the Lord Chancellor of Great Britain to extend to land and stock within any of her Majesty's dominions, except Scotland and Ireland.

Powers given to Lord Chancellor to extend, &c.

Sect. 40. And may be exercised in like manner by the Lord Chancellor of Ireland, with respect to land and stock in Ireland.

and may be executed by Lord Chancellor of Ireland.

Sect. 41. Inquisitions on commissions, in the nature of writs *de lunatico inquirendo* under the Great Seal of Great Britain, to be transmitted and entered of record in Ireland, and acted on there, and *vice versa*.

Inquisitions in lunacy to be entered of record in Ireland, and *vice versa*.

cause depending in the said Court, to direct all or any part of the dividends to be applied for the maintenance and education, or otherwise, for the benefit of such infant.

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Inquisitions in lunacy to be entered of record in Ireland, and *vice versa*.

Powers given
to the Lord
Chancellor to
be exercised
by the Lord
Keeper.

Sect. 42. The powers given by the Act to the Lord Chancellor of Great Britain and Ireland, to be exercised in like manner by the Lord Keeper or Commissioners of the Great Seal of Great Britain and Ireland respectively.

In whose
name trans-
fers of stock
belonging to
any company
or the Bank
to be made.

Sect. 43. In all cases in which orders shall be made, in pursuance of the Act for the transfer of stock, the person to be named in such order for making such transfer shall be some officer of the company or society, in whose books such transfer shall be made; and where such transfer shall be directed to be made in books kept by the governor and company of the Bank of England, such officer shall be the secretary or deputy secretary, or accountant-general or deputy accountant-general, for the time being, of the said governor and company.

Indemnity to
the Bank.

Sect. 44. The Act to be an indemnity to the Bank of England, and all other companies.

APPENDIX.



GENERAL ORDERS

OF

THE COURT OF CHANCERY,

3rd APRIL, 1828.



THE Right Honourable John Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Leach, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, doth hereby order and direct in manner following; that is to say,

I. That every plaintiff, as well in a country cause as in a town cause, shall be at liberty, without affidavit, to obtain an order for a subpoena returnable immediately, but such subpoena in a country cause is to be without prejudice to the defendant's right to eight days' time to enter his appearance after he has been served with the subpoena.

II. That a writ of subpoena to appear, or to appear and answer, shall be sued out for each defendant, except in the case of husband and wife defendants; and that the costs of all such writs shall be costs in the cause. [Altered by Order 5 of 1833, p. 306, *post*.]

III. That a defendant in a country cause shall no longer be permitted to crave the common *dedimus*; but

shall either put in his answer within eight days after his appearance, or shall obtain the usual orders for time. [Altered by Order 10 of 1833, p. 308, *post*.]

IV. That in all cases, whether the defendant's answer be filed in term time or in vacation, the plaintiff shall be allowed two months to deliver exceptions to such answer; but if the exceptions be not delivered within the two months, the answer shall thenceforth be deemed sufficient, and the plaintiff shall have no order to deliver exceptions *nunc pro tunc*.

V. That when exceptions taken to an answer for insufficiency are not submitted to, the plaintiff may at the expiration of eight days after the exceptions are delivered, but not before, unless in injunction causes, refer such answer for insufficiency; and if he do not refer the same within the next six days, he shall be considered as having abandoned the exceptions; in which latter case such answer shall be thenceforth deemed sufficient.

VI. That if the plaintiff do not, within a fortnight after a defendant's second or third answer is filed, refer the same for insufficiency on the old exceptions, such answer shall thenceforth be deemed sufficient. [Altered by Order 6 of 1831, p. 300, *post*.]

VII. That if the plaintiff do refer a defendant's second or third answer for insufficiency on the old exceptions, then the particular exception or exceptions to which he requires a further answer shall be stated in the order.

VIII. That if upon a reference of exceptions the Master shall find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his report, from the date whereof such time shall run, and it shall not be necessary for the plaintiff to serve a subpoena for the defendant to make a better answer. And any defendant who shall not put in a further answer within the time so allowed, shall be in contempt, and be dealt with accordingly. [Altered by Order 18 of 1833, p. 311, *post*.]

IX. That if upon a reference of exceptions the answer be certified sufficient, it shall be deemed to be so from the date of the Master's report; and if the defendant submit to answer without a report from the Master, the answer shall be deemed insufficient from the date of the submission.

X. That upon a *third* answer being reported insufficient, the defendant shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until such defendant shall have perfectly answered such interrogatories; and shall pay in addition to the four pounds costs heretofore paid such further costs as the Court shall think fit to award.

XI. That no order shall be made for referring any pleading or other matter depending before the Court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent, nor unless such order be obtained within six days after the delivery of such exceptions.

XII. That when any order is made for referring an answer for insufficiency, or for referring an answer or other pleading or matter depending before the court for scandal or impertinence, the order shall be considered as abandoned, unless the party obtaining the order shall procure the Master's report within a fortnight from the date of such order, or unless the Master shall within the fortnight certify that a further time, to be stated in his certificate, is necessary, in order to enable him to make a satisfactory report; in which case the order shall be considered as abandoned if the report be not obtained within the further time so stated; and where such order relates to alleged insufficiency in an answer, such answer shall be deemed sufficient from the time when the order is to be considered as abandoned.

XIII. That the plaintiff shall be at liberty, before filing a replication, to obtain, upon motion or petition without notice, one order for leave to amend the bill;

but no further leave to amend shall be granted before replication, unless the Court shall be satisfied by affidavit that the draft of the intended amendments has been settled, approved and signed by counsel, and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the plaintiff; such affidavit to be made by the plaintiff, or one of the plaintiffs where there is more than one, or his, her, or their solicitor, or by such solicitor alone, in case the plaintiff or plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no order to amend shall be made before replication, either without notice or upon affidavit, in manner hereinbefore-mentioned, unless such order be obtained within six weeks after the answer, if there be only one defendant, or after the last of the answers, if there be two or more defendants, is to be deemed sufficient. [Altered by Order 13 of 1831, p. 300, *post*.]

XIV. That every order for leave to amend the bill shall contain an undertaking by the plaintiff to amend the bill within three weeks from the date of the order; and in default thereof such order shall become void, and the cause shall, as far as relates to any motion to dismiss the bill for want of prosecution, stand in the same situation as if such order had not been made.

XV. That after a replication has been filed the plaintiff shall not be permitted to withdraw it and to amend the bill without a special order of the Court for that purpose, made upon a motion, of which notice has been given; the Court being satisfied by affidavit that the matter of the proposed amendment is material and could not, with reasonable diligence, have been sooner introduced into the bill.

XVI. That where the answer of a defendant is to be deemed sufficient, whether it be in term time or in vacation, if the plaintiff or plaintiffs shall not proceed in the cause, the defendant shall be at liberty to move

at the first seal after the following term, upon notice, that the bill be dismissed with costs for want of prosecution; and the bill shall accordingly be dismissed with costs, unless the plaintiff or plaintiffs forthwith file a replication, and appear upon such motion and give an undertaking to speed the cause with effect in the usual form, or without filing a replication, shall appear upon such motion, and give an undertaking to hear the cause, as against the defendant making the motion, upon bill and answer; or unless it shall appear that the plaintiff or plaintiffs is or are unable to proceed in the cause, by reason of any other defendant or defendants not having sufficiently answered the bill, and that due diligence has been used to obtain a sufficient answer or answers from such other defendant or defendants; in which case the Court shall allow to the plaintiff or plaintiffs such further time for proceeding in the cause as shall appear to the Court to be reasonable. [Altered by Order 17 of 1831, p. 302, *post.*]

XVII. That where the plaintiff files a replication, without having been served with a notice of any motion to dismiss the bill for want of prosecution, the plaintiff shall serve the subpoena to rejoin and obtain his order for a commission within one week from the filing of the replication; and if such order be obtained in term time, then such commission shall be at the latest returnable on the first return of the following term; and if such order be obtained in the vacation, then such commission shall be returnable at the latest on the last return of the following term; and where such commission is returnable on or before the first return of the following term, there the plaintiff shall give his rules to produce witnesses and pass publication in that term, and shall set down his cause to be heard in the following term; and where such commission is returnable on or before the last day of the following term, there the plaintiff shall give his rules to produce witnesses and pass publication in the next

term, and shall set down his cause to be heard in the third term; and if the plaintiff shall make any default herein, then upon application by the defendant upon motion or petition without notice, the plaintiff's bill shall stand dismissed out of Court with costs. [Altered by Order 17 of 1831, p. 302, *post.*]

XVIII. That publication shall not be enlarged, except upon special application to the Court, supported by affidavit, and at the cost of the party applying, unless otherwise ordered by the Court. [Altered by Order 18 of 1831, p. 303, *post.*]

XIX. That whenever the time allowed for any of the following purposes, that is to say, for amending any bill, for filing, delivering, and referring exceptions to any answer, or for obtaining a Master's report upon any exceptions, would expire in the interval between the last seal after Trinity term and the first seal before Michaelmas term, or between the last seal after Michaelmas term and the first seal before Hilary term, such time shall extend to and include the day of the general seal then next ensuing. [Altered by Order 19 of 1831, p. 303, *post.*]

XX. That service on the clerk in court, of any subpoena to rejoin, or to answer an amended bill, or to hear judgment, shall be deemed good service.

XXI. That the order nisi for confirming a report may be obtained upon petition as well as by motion, and that service thereof upon the clerk in court of any party shall be deemed good service upon such party.

XXII. That every notice of motion, and every petition, notice of which is necessary, shall be served at least two clear days before the hearing of such motion or petition.

XXIII. That the order nisi for dissolving the common injunction may be obtained upon petition as well as by motion, and that every such order be served two

clear days at least before the day upon which cause is to be shown against dissolving the injunction.

XXIV. That when a defendant in contempt for want of answer, obtains upon filing his answer the common order to be discharged as to his contempt, on payment or tender of the costs thereof, the plaintiff shall not, by accepting such costs, be compelled, in the event of the answer being insufficient, to recommence the process of contempt against the defendant, but shall be at liberty to take up the process at the point to which he had before proceeded. [Altered by Order 24 of 1831, p. 303, *post.*]

XXV. That no witness to be examined before either of the examiners for any party in a cause, be in future produced at the seat of the clerk in court for the opposite party; but that a notice in writing containing the name and description of the witness be served there as heretofore.

XXVI. That the examiner who shall take the examination in chief of any witness shall be at liberty to take his cross-examination also.

XXVII. That where the same solicitor is employed for two or more defendants, and separate answers shall have been filed, or other proceedings had, by or for two or more defendants separately, the Master shall consider, in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate answers or other proceedings were necessary or proper; and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

XXVIII. That where a plaintiff obtains a decree with costs, there the costs occasioned to the plaintiff by the insufficiency of the answer of any defendant shall be deemed to be part of the plaintiff's costs in the cause, such sum or sums being deducted therefrom

as were paid by the defendant, according to the course of the Court, upon the exceptions to the said answer being submitted to or allowed. [See 19th Order of 1833, p. 311, *post*.]

XXIX. That where the plaintiff is directed to pay to the defendant the costs of the suit, there the costs occasioned to a defendant by any amendment of the bill shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which may have been made by special leave of the Court, or which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum or sums which may have been paid by the plaintiff, according to the course of the Court, at the time of any amendment.

XXX. That when upon taxation a plaintiff who has obtained a decree with costs is not allowed the costs of any amendment of the bill, upon the ground of its having been unnecessarily made, the defendant's costs, occasioned by such amendment, shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

XXXI. That upon the allowance of any plea or demurrer, the plaintiff or plaintiffs shall pay to the defendant or defendants the taxed costs thereof; and when such plea or demurrer is to the whole bill, then the further taxed costs of the suit also; unless in the case of a plea the plaintiff or plaintiffs shall undertake to reply thereto, and then the costs shall be reserved, unless the Court shall think fit to make other order to the contrary.

XXXII. That upon the overruling of any plea or demurrer, the defendant or defendants shall pay to the plaintiff or plaintiffs the taxed costs occasioned thereby, unless the Court shall make other order to the contrary.

XXXIII. That when two counsel appear for the

same party or parties upon the hearing of any cause or matter, and it shall appear to the Master to have been necessary or proper for such party or parties to retain two counsel to appear, the costs occasioned thereby shall be allowed, although both of such counsel may have been selected from the outer bar.

XXXIV. That when a cause which stands for hearing is called on to be heard, but cannot be decided by reason of a want of parties, or other defect on the part of the plaintiff, and is therefore struck out of the paper, if the same cause is again set down, the defendant or defendants shall be allowed the taxed costs occasioned by the first setting down, although he or they do not obtain the costs of the suit.

XXXV. That where a cause being in the paper for hearing is ordered to be adjourned upon payment of the costs of the day, there the party to pay the same, whether before the Lord High Chancellor, the Master of the Rolls, or the Vice Chancellor, shall pay the sum of ten pounds, unless the Court shall make other order to the contrary.

XXXVI. That whenever upon the hearing of any cause or other matter it shall appear that the same cannot conveniently proceed, by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court, and which according to its practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court shall think fit to award.

XXXVII. That the sworn clerks of the Court and the waiting clerks shall not be entitled to receive any fees for attendance in Court, except in cases where they shall actually attend, and where their attendance shall be necessary.

XXXVIII. That where any cause which is set down

to be heard, either in the Court of the Lord Chancellor, or in the Court of the Master of the Rolls, shall be afterwards set down to be heard in the other of the said two Courts, there the solicitor for the plaintiff shall certify the fact to the registrar of the Court where the cause was first set down, who shall cause an entry thereof to be made in his book of causes, opposite to the name of such cause; and the solicitor for the plaintiff shall be allowed a fee of six shillings and eight-pence for so certifying the fact, if he shall certify the same within eight days after the said cause is so set down a second time.

XXXIX. That where any cause shall become abated, or shall be compromised after the same is set down to be heard in either of the said two Courts, the solicitor for the plaintiff shall also certify the fact, as the case may be, to the registrar of the Court where the cause is so set down, who shall in like manner cause an entry thereof to be made in his cause-book, and the solicitor for the plaintiff shall be allowed the same fee of six shillings and eight-pence for such certificate, if he shall certify the fact as soon as the same shall come to his knowledge.

XL. That the penal sum in the bond to be given as a security to answer costs by any plaintiff *who is out of the jurisdiction of the Court*, be increased from forty pounds to one hundred pounds.

XLI. That the deposit upon exceptions to a Master's report shall be increased to ten pounds, to be paid to the adverse party, if the exceptions are overruled; in which case the exceptant shall also pay the further taxed costs occasioned by such exceptions, unless the Court shall otherwise order; but in case the exceptant shall in part succeed, the deposit shall be dealt with, and costs shall be paid as the Court shall direct.

XLII. That the deposit upon every petition of appeal or rehearing be increased to twenty pounds, to be

paid to the adverse party when the decree or order appealed from is not varied in any material point, together with the further taxed costs occasioned by the appeal or rehearing, unless the Court shall otherwise order.

XLIII. That for the purpose of enabling all persons to obtain precise information as to the state of any cause, and to take the means of preventing improper delay in the progress thereof, any clerk in court shall, at the request of any person, whether a party or not in the suit or matter inquired after, procure and furnish a certificate from the Six Clerks' Office, specifying therein the dates and general description of the several proceedings which have been taken in any cause in the said office, whether such clerk in court be or not concerned as clerk in court in the cause; and that he shall be entitled to receive the sum of three shillings and fourpence for such certificate, and no more.

XLIV. That whenever a person who is not a party appears in any proceeding, either before the Court or before the Master, service upon the solicitor in London, by whom such party appears, whether such solicitor act as principal or agent, shall be deemed good service, except in matters of contempt, requiring personal service.

XLV. That clerical mistakes in decrees or decretal orders or errors arising from any accidental slip or omission, may at any time before enrolment be corrected upon petition, without the form and expense of a rehearing.

XLVI. That every application to stay proceedings upon any decree or order which is appealed from, be made first to the judge who pronounced the decree or order.

XLVII. That every application for the new trial of any issue at law directed by a judge of this Court, be first made to the judge who directed such issue.

XLVIII. That where any decree or order referring any matter to a Master is not brought into the Master's office within two months after the same decree or order is pronounced, there any party to the cause, or any other party interested in the matter of the reference, shall be at liberty to apply to the Court by motion or petition, as he may be advised, for the purpose of expediting the prosecution of the said decree or order.

XLIX. That every Master shall enter in a book to be kept by him for that purpose, the name or title of every cause or matter referred to him, and the time when the decree or order is brought into his office, and the date and description of every subsequent step taken before him in the same cause or matter, and the attendance or non-attendance of the several parties on each of such steps, so that such book may exhibit at one view the whole course of proceeding which is had before him in each particular cause and matter.

L. That upon the bringing in of every decree or order the Solicitor bringing in the same shall take out a warrant appointing a time, which is to be settled by the Master, for the purpose of the Master taking into consideration the matter of the said decree or order, and shall serve the same upon the clerks in court of the respective parties, or upon the parties or their solicitors in cases where they shall have no clerks in court.

LI. That at the time so appointed for considering the matter of the said decree or order, the Master shall proceed to regulate as far as may be the manner of its execution; as for example, to state what parties are entitled to attend future proceedings, to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters requiring evidence shall be proved by affidavit or by examination of witnesses;

and in the latter case, if necessary, to issue his certificate for a commission; and if the Master shall think it expedient so to do, he shall then fix a certain time or certain times within which parties are to take any certain proceeding or proceedings before him.

LII. That upon any subsequent attendance before him in the same cause or matter, the Master, if he thinks it expedient so to do, shall fix a certain time or certain times within which the parties are to take any other proceeding or proceedings before him.

LIII. That where some or one, but not all, the parties, do attend the Master at an appointed time, whether the same is fixed by the Master personally or upon a warrant, there the Master shall be at liberty to proceed *ex parte* if he thinks it expedient, considering the nature of the case so to do.

LIV. That where the master has proceeded *ex parte*, such proceeding shall not in any manner be reviewed in the Master's office, unless the Master, upon a special application made to him for that purpose by a party who was absent, shall be satisfied that he was not guilty of wilful delay or negligence, and then only upon payment of all costs occasioned by his non-attendance; such costs to be certified by the Master at the time, and paid by the party or his solicitor before he shall be permitted to proceed on the warrant to review.

LV. That where a proceeding fails, by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, there the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending, by the absent party or parties, or by his or their solicitor or solicitors, or clerk or clerks in court personally, as the Master in his discretion shall think fit; and upon motion or petition, without notice, the Court will make order for the payment of such costs accordingly.

LVI. That where the party actually prosecuting a decree or order does not proceed before the Master with due diligence, there the Master shall be at liberty, upon the application of any other party interested, either as a party to the suit or as one who has come in and established his claim before the Master under the decree or order, to commit to him the prosecution of the said decree or order; and from thenceforth, neither the party making default nor his solicitor shall be at liberty to attend the Master as the prosecutor of the said decree or order.

LVII. That upon any application made by any person to the Court, the Master, if required by the person making the application, shall in as short a manner as he conveniently can, certify to the Court the several proceedings which shall have been had in his office in the same cause or matter, and the dates thereof.

LVIII. That every Master shall be at liberty, without order, to proceed in all matters *de die in diem* at his discretion.

LIX. That every warrant for attendance before the Master shall be considered as peremptory, and the Master shall be at liberty to continue the attendance beyond the hour and during such time as he thinks proper, and shall be empowered to increase the fee for the solicitor's attendance in proportion to the time actually occupied; and in case the Master shall not be attended by the solicitor or a competent person on behalf of the solicitor of any party, the Master shall in such case disallow the usual fee for the solicitor's attendance, taking care either in allowing an increased fee, or disallowing the usual fee, to mark his determination in his attendance-book, and also on the warrant for attendance.

LX. That where by any decree or order of the Court, books, papers, or writings are directed to be produced before the Master for the purposes of such

decree or order, it shall be in the discretion of the Master to determine what books, papers, or writings are to be produced, and when and for how long they are to be left in his office ; or in case he shall not deem it necessary that such books, papers, or writings should be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he shall deem expedient.

LXI. That all parties accounting before the Masters shall bring in their accounts in the form of debtor and creditor : and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party upon interrogatories, as the Master shall direct.

LXII. That all such accounts, when passed and settled by the Master, shall be entered in a book to be kept for that purpose in the Master's office, as is now the practice with regard to receivers' accounts, and with proper indexes, in order to be referred to as occasion may require.

LXIII. That the Masters, in acting upon the Order of the Court of 23d April, 1796, shall be at liberty upon the appointment of a receiver, or at any time subsequent thereto, in the place of annual periods for the delivery of the receiver's accounts and payment of his balances, to fix either longer or shorter periods at his discretion ; and when such other periods are fixed by the Master, the regulations and principles of the said order shall in all other respects be applied to the said receiver.

LXIV. That in every order directing the appointment of a receiver of a landed estate, there be inserted a direction that such receiver shall manage, as well as set and let, with the approbation of the Master ; and that in acting under such an order it shall not be necessary that a petition be presented to the Court in the first instance, but the Master without special order shall

receive any proposal for the management or letting of the estate from the parties interested, and shall make his report thereon, which report shall be submitted to the Court for confirmation in the same manner as is now done with respect to reports on such matters made upon special reference ; and until such report be confirmed, it shall not give any authority to the Receiver.

LXV. That all affidavits which have been previously made and read in Court, upon any proceeding in a cause or matter, may be used before the Master.

LXVI. That where upon an inquiry before the Master affidavits are received, there no affidavits in reply shall be read, except as to new matter, which may be stated in the affidavits in answer ; nor shall any further affidavits be read unless specially required by the Master.

LXVII. That the Master shall not receive further evidence as to any matter depending before him after issuing the warrant on preparing his report ; but that he shall not issue such warrant without previously requiring the parties to show cause why such warrant should not issue.

LXVIII. That no warrant to review any proceeding in the Master's office shall be allowed to be taken out, except by permission of the Master, upon special grounds to be shown to him for that purpose ; and the costs of such review when allowed shall be in the discretion of the Master, and shall be paid by and to such persons and at such time as he shall direct.

LXIX. That the Master shall have power at his discretion to examine any witness *viva voce* ; and in such case the subpoena for the attendance of the witness shall, upon a note from the Master, be issued from the Subpoena Office ; and that the evidence upon such *viva voce* examination shall be taken down by the Master, or by the Master's clerk in his presence, and preserved in the Master's office, in order that the same may be used by the Court if necessary.

LXX. That in all matters referred to him, the Master shall be at liberty, upon the application of any party interested, to make a separate report or reports from time to time as to him shall seem expedient; the costs of such separate reports to be in the discretion of the Court.

LXXI. That where a Master shall make a separate report of debts or legacies, there the Master shall be at liberty to make such certificate as he thinks fit with respect to the state of the assets; and every person interested shall thereupon be at liberty to apply to the Court as he shall be advised.

LXXII. That the Master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require; the evidence upon such examination being taken down at the time by the Master, or by the Master's clerk in his presence, and preserved, in order that the same may be used by the Court if necessary.

LXXIII. That if any party wishes to complain of any matter introduced into any state of facts, affidavit, or other proceeding before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's office is insufficient, he shall be at liberty, without any order of reference by the Court, to take out a warrant for the Master to examine such matter, and the Master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent.

LXXIV. That the Master, in deciding on the sufficiency or insufficiency of any answer or examination, shall take into consideration the relevancy or materiality of the statement or question referred to.

LXXV. That in cases where estates or other property are directed to be sold before the Master, the

Master shall be at liberty, if he shall think it for the benefit of the parties interested, to order the same to be sold in the country, at such place and by such person as he shall think fit.

LXXVI. That where a Master is directed to settle a conveyance, or to tax costs, in case the parties differ about the same, there the party claiming the costs, or entitled to prepare the conveyance, shall bring the bill of costs, or the draft of the conveyance, into the Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice, such other party shall have liberty to inspect the same without fee, and may take a copy thereof if he thinks fit; and at or before the expiration of the eight days, or such further time as the Master shall in his discretion allow, he shall then either agree to pay the costs or adopt the conveyance, as the case may be, or signify his intention to dispute the same; and in case he dispute the same, the Master shall then proceed to tax the costs, or settle the conveyance, according to the practice of the Court. (Altered by Order 76 of 1831, p. 303, *post.*)

LXXVII. That whenever in any proceeding before a Master the same solicitor is employed for two or more parties, such Master may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and may refuse to proceed until such party is so represented.

LXXVIII. That such of the foregoing orders as limit or allow any specified time for any party to take any proceeding, or for any other purpose, shall only apply to cases where the period from which such specified time is to be computed shall be on or subsequent to the first day of Easter term next ensuing.

LXXIX. That such of the foregoing orders as relate to the manner in which the costs of any suit or proceeding are to be taxed, and to the amount of costs

to be paid on any occasion, shall not apply to any costs which shall have been incurred, or to the costs of any proceeding which shall have been had or taken previously to the first day of Easter term next ensuing.

LXXX. That such of the foregoing orders as relate to the course of proceeding in the offices of the Masters of the Court, or to the authority of the Masters, shall have effect from and after the first day of Easter term next ensuing, and shall be acted upon by the Masters in all cases, except where from the then advanced stage of any proceeding they are not practically applicable.

LXXXI. That subject to the regulations hereinbefore specified, the foregoing orders shall take effect as to all suits whether now depending or hereafter commenced, on the first day of EASTER TERM next.

LYNDHURST, C.
JOHN LEACH, M. R.
LANCELOT SHADWELL, V. C.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
23d NOVEMBER, 1831.

—♦—

THE Right Honourable Henry Lord Brougham and Vaux, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Leach, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, doth hereby order and direct, that the Orders of the 3d April, 1828, be amended as to numbers VI., XIII., XVI., XVII., XVIII., XIX., XXIV., and LXXVI., in manner following; that is to say,

VI. That if the plaintiff do not, within three weeks after a defendant's second or third answer is filed, refer the same for insufficiency on the old exceptions, such answer shall thenceforth be deemed sufficient.

XIII. That *after an answer has been filed*, the plaintiff shall be at liberty, before filing a replication, to obtain upon motion or petition without notice, one order for leave to amend the bill; but no further leave to amend shall be granted *after an answer*, and before replication, unless the Court shall be satisfied by affidavit that the draft of the intended amendments has been settled, approved, and signed by counsel, and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the plaintiff; such affidavit to be made by the plaintiff, or one of the plaintiffs, where there is more than one, *and* his, her, or their solicitor, or by such solicitor alone, in case the plaintiff or plaintiffs, from being abroad or otherwise,

shall be unable to join therein ; but no order to amend shall be made after answer and before replication, either without notice or upon affidavit in manner hereinbefore mentioned, unless such order be obtained within six weeks after the answer, if there be only one defendant, or after the last of the answers if there be two or more defendants, is to be deemed sufficient. But this order shall not extend to amendments which are made only for the purpose of rectifying some clerical error, or error in names, dates, or sums ; in which cases the order to amend may be obtained upon motion or petition, without notice.

XVI. That where the answer of a defendant is to be deemed sufficient, whether it be in term time or in vacation, if the plaintiff or plaintiffs shall not proceed in the cause, the defendant shall be at liberty, after the expiration of two months, to move, upon notice, that the bill be dismissed with costs, for want of prosecution ; and the bill shall accordingly be dismissed with costs, unless the plaintiff or plaintiffs shall appear upon such motion, and give an undertaking to file a replication, and serve a subpoena to rejoin ; and in case he requires a commission to examine witnesses, shall obtain and serve an order for such commission, within three weeks from the date of such undertaking : or unless the plaintiff or plaintiffs, without filing a replication, shall appear upon such motion, and give an undertaking to hear the cause as against the defendant making the motion upon bill and answer : or unless it shall appear that the plaintiff or plaintiffs, is or are unable to proceed in the cause, by reason of any other defendant or defendants not having sufficiently answered the bill, and that due diligence has been used to obtain a sufficient answer or answers, from such other defendant or defendants ;— in which case the Court shall allow to the plaintiff or plaintiffs such further time for proceeding in the cause as shall appear to the Court to be reasonable. And in case the plaintiff or plaintiffs do appear upon the motion to dismiss, and give the undertaking to file a replica-

tion, and take the other proceedings consequent thereon, hereinbefore required, then all the rules and regulations, with respect to the commission and the return thereof, and the setting down the cause for hearing, and the rights of the defendant with respect to the commission, in case of any default on the part of the plaintiff, which are particularly expressed in the next Order, shall apply to all cases under this Order.

XVII. That where the plaintiff files a replication, without having been served with a notice of motion to dismiss the bill for want of prosecution, he shall serve the subpoena to rejoin; and in case he requires a commission to examine witnesses, shall obtain and serve an order for such commission, within three weeks from the filing of the replication; and such commission shall, at the latest, be returnable on the first return of the second term then next following: and the plaintiff shall give his rules to produce witnesses, and pass publication at the latest in the same term, and shall set down his cause for hearing, and duly serve the subpoena to hear judgment returnable in the succeeding term; and if the plaintiff shall make default herein, then upon application by the defendant, upon notice of motion, the plaintiff's bill shall stand dismissed out of Court with costs, unless the Court shall make special order to the contrary. And in case the plaintiff serves a subpoena to rejoin, within three weeks after filing the replication, but does not attend and serve an order for a commission to examine witnesses within that time, then the defendant shall be at liberty, without notice, to obtain an order for a commission to examine witnesses, returnable at the like period as the plaintiff is entitled to, pursuant to this order, and shall have the carriage of such commission. And if the plaintiff obtains an order for and sues out a commission, and neglects to execute and return the same, at or within the time stated in this order, the defendant shall be entitled to an order as before stated, for a commission returnable on the last return of the term following that which is allowed

to the plaintiff by this order for the return of his commission. And when any commission issues pursuant to this order, or the last foregoing order, the parties shall have liberty to execute the same in term time, and publication shall stand enlarged until the commission shall be returnable; and the plaintiff shall be at liberty to set down the cause, in the mean time, without the necessity of inserting such directions in the order for the commission.

XVIII. That publication shall not be enlarged, except upon special application to the Court, made upon notice supported by affidavit, and at the cost of the party applying, unless otherwise ordered by the Court.

XIX. That the time which occurs between the last seal after Trinity Term and the first seal before Michaelmas Term, and between the last seal after Michaelmas Term and the first seal before Hilary Term, shall not be reckoned in the computation of time which is allowed to a party for *amending any bill, for filing, delivering, or referring exceptions to any answer, or for obtaining a Master's report upon any exceptions.*

XXIV. That when a defendant, in contempt for want of answer, obtains, upon filing his answer, the common order to be discharged as to his contempt, on payment or tender of the costs thereof, or the plaintiff accepts the costs, without order, he shall not by such acceptance be compelled, in the event of the answer being insufficient, to recommence the process of contempt against the defendant, but shall be at liberty to take up the process at the point to which he had before proceeded.

LXXVI. That where a Master is directed to settle a conveyance, or to tax costs in case the parties differ about the same, then the party claiming the costs, or entitled to prepare the conveyance, shall bring the bill of costs, or the draft of the conveyance, into the Master's office, and give notice of his having so done to the other party; and at any time within eight days

after such notice, such other party shall have liberty to inspect the same without fee, and may take a copy thereof if he thinks fit. And at or before the expiration of the eight days, or such further time as the Master shall in his discretion allow, he shall then either agree to pay the costs or adopt the conveyance, as the case may be, or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs, or to deliver a statement in writing, of the alterations which he proposes in the draft of the conveyance. But if he make no such tender, nor deliver any such statement in writing, or if the other party refuses to accept the sum so tendered, or to adopt the proposed alterations in the draft of the conveyance, the Master shall then proceed to tax the costs, or settle the conveyance according to the practice of the Court. And in case the taxed costs shall not exceed the sum tendered, or the Master shall adopt the proposed alterations in the draft of the conveyances, then the costs of the taxation, or the costs of the proceeding with respect to the conveyance, shall be borne by the other party.

LXXXII. And whereas the present practice, that causes can only be entered for hearing during the time of term, and that the subpoena *ad audiendum judicium* can only be then returnable, is productive of great delay and inconvenience: it is hereby further ordered, by the said Lord High Chancellor, with the advice and assistance aforesaid, that from henceforth causes may be set down for hearing, and the subpoenas *ad audiendum judicium* served and returnable on any day as well out of term as in term, and this order is to be called the 82nd Order.

And it is hereby further ordered, that the aforesaid 82nd Order shall take effect immediately, and the aforesaid amended orders shall take effect on the first day of Hilary Term next.

BROUGHAM, C.
JOHN LEACH, M.R.
LANCELOT SHADWELL, V.C.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,

21st DECEMBER, 1833.

WHEREAS it is expedient that certain further orders for regulating the practice of the Court of Chancery be added to those which were published on the 26th day of November last, and that thereupon certain alterations be made in the said orders; and it is also expedient that the whole of the said new orders should be embodied together under the act of the 3rd and 4th of William the Fourth, intituled "An Act for the Regulation of the Proceedings and Practice of certain Offices of the High Court of Chancery in England;"—

IT IS HEREBY DECLARED AND DIRECTED, by the Lord High Chancellor, by and with the concurrence of the Master of the Rolls, and of the Vice Chancellor, that from and after the 10th day of January next, the several orders which hereafter follow shall be considered as a substitution for the said orders of the 26th day of November last.

I. That all writs of subpoena in this Court shall be prepared by the solicitor of the party requiring the same, and that the seal for sealing the same shall be marked or inscribed with the words, "Subpoena Office, Chancery;" and such writs shall be in the forms mentioned at the foot of these orders, or as near as may be with such alterations and variations as circumstances may require.

II. That a præcipe in the usual form, containing further the particulars hereinafter mentioned, (as to the names and residences of the solicitors issuing the

same), shall in all cases be delivered and filed at the Subpoena Office; and that on a subpoena for costs being sealed, the certificate or report shall be produced to the officer sealing the writ, as his authority for sealing it.

III. That the name or firm, and the place of business or residence of the solicitor or solicitors issuing a subpoena shall be indorsed thereon; and where such solicitors shall be agents only, then there shall be further indorsed thereon the name or firm, and place of business or residence of the principal solicitor or solicitors.

IV. That the service of subpoenas shall be effected by delivering a copy of the writ and of the indorsement thereon, and at the same time producing the original writ; and that in all cases where a subpoena might heretofore have been served by leaving the body thereof at the party's dwelling-house or otherwise than personally, it shall be sufficient to leave a copy of such subpoena in the same manner, producing the original writ to the person with whom such copy shall be so left.

V. That every subpoena, other than a subpoena *duces tecum*, shall contain three names where necessary or required, and that a gross sum or fee of twelve shillings and sixpence shall be the amount allowed in costs for every subpoena *duces tecum*, including the præcipe, attendance, and sum paid for sealing, and five shillings and ten-pence each for all other subpoenas; in addition to which last-mentioned sum, the solicitor suing out the same shall be allowed one fee of six shillings and eight-pence for the præcipes and attendance on sealing such subpoenas as heretofore, where the number of names included therein shall not exceed nine; and if they shall exceed nine in number, then an additional fee of six shillings and eight-pence; and if they exceed eighteen, a further fee of six shillings and eight-pence,

and so in proportion for every additional number of nine names, included in such subpoenas.

VI. That no more than three persons shall be included in one subpoena *duces tecum*, and that the party suing out the same shall be at liberty to sue out a subpoena for each person, if it shall be deemed necessary or desirable; and that the sum of twelve shillings and six-pence shall be allowed in costs for every such subpoena, including the *præcipe*, attendance, and sum paid for sealing the same.

VII. That the time for serving any subpoena (except for costs) shall be limited to the last day of the term next following the term or vacation in which it was sued out; and that in the interval between the suing out and service of any subpoena, the party suing out the same shall be at liberty to correct any error in the names of parties or witnesses, and to have the writ resealed, upon payment to the clerk at the Subpoena Office of a fee of one shilling, and at the same time leaving a corrected *præcipe* of such subpoena, marked "altered and resealed," and signed with the name and address of the solicitor or solicitors suing out the same.

VIII. That when any defendant has been taken into custody upon attachment or other process, for want of appearance to a bill of revivor, and such defendant shall have been taken thereon, and shall refuse or neglect to enter an appearance to such bill within eight days after the return of such attachment, the plaintiff shall be entitled, as of course, upon motion or petition, to the common order to revive; and if the defendant cannot be found so as to be taken upon such attachment, and a return of "*non est inventus*" shall have been made thereon, the plaintiff shall, upon producing such return, and an affidavit that due diligence has been used in endeavouring to execute such attachment, and that there was good reason to believe that the defendant was in the county to which such attachment

issued at the time of suing out the same, be also entitled, as of course, upon motion or petition, at the end of eight days after the return of such attachment, to obtain the common order to revive ; and that in either of such cases the order shall recite, as the ground for granting the same, that the defendant is in contempt, and that the time limited by the Court to show cause against reviving the suit has expired.

IX. That a defendant shall be at liberty, without order, to sue out a dedimus to take his plea, answer, or demurrer (not demurring alone) in the country, on giving two days' notice in writing to the plaintiff's clerk in court to give commissioner's name to see the same taken, and in default thereof the defendant shall be at liberty to sue out the same, directed to his own commissioners ; and in cases of severe illness or other bodily infirmity, whereby a defendant, resident not less than four miles from Lincoln's Inn Hall, shall be rendered unable to travel or leave home, he shall, upon affidavit first made thereof and duly filed, be entitled to such dedimus as aforesaid, on such notice first given as hereinbefore directed.

X. That in every cause where an original or supplemental bill, or bill of revivor, has been filed subsequent to the 25th day of November last, or shall hereafter be filed, a defendant shall, after appearance, and without order, be allowed eight weeks in a town cause, and ten weeks in a country cause, to plead, answer, or demur (not demurring alone) to any such original or supplemental bill, or any such bill of revivor, to which an answer is required ; and five weeks in a town cause, and seven weeks in a country cause, to plead, answer, or demur (not demurring alone) to any amended bill, to which the plaintiff shall require an answer ; but that twelve days only shall be allowed a defendant to demur alone to any such original, amended, or supplemental bill, or bill of revivor. And in every cause for an injunction to stay proceedings at law, if the de-

defendant do not plead, answer, or demur to the plaintiff's bill within eight days after appearance, the plaintiff shall be entitled, as of course, upon motion, to such injunction; and if the defendant shall not within eight days after appearance to a bill of revivor, show cause by plea, answer, or demurrer filed, the plaintiff shall be entitled, as of course, upon motion or petition, to the common order to revive, which order shall recite, as the ground for granting the same, that the time limited by the Court to show cause against reviving the suit has expired.

XI. That where a common injunction for want of answer is awarded, the order shall recite, as the ground for granting the same, that the defendant has omitted to put in his answer, plea, or demurrer, within the time limited by the Court in that behalf.

XII. That where a defendant is in contempt to an attachment for want of appearance, the interval between the day fixed by the subpoena for appearance, and that on which the same is actually entered, shall be deducted from the time hereinbefore allowed to a defendant to plead, answer, or demur, not demurring alone, to the plaintiff's bill.

XIII. That the day on which an order for the plaintiff to give security for costs is served, and the period from thence to and including the day on which such security is given, shall not be reckoned in the computation of the time allowed a defendant to plead, answer, or demur.

XIV. That where the plaintiff obtains an order to amend without requiring any further answer, and shall amend the bill any otherwise than by an alteration of names, dates, or sums, or the correction of clerical errors only, the defendant shall, as of course, have eight days' time to consider whether it is necessary for him or her to answer the same, at the end of which time the plaintiff shall be at liberty to file a replication,

or set down the cause for hearing on bill and answer, unless the defendant shall have previously served an order for time to answer, or taken out and served a warrant for time to answer such amended bill; in which last case, the Master may allow the defendant such time (if any) for that purpose as he shall think fit.

XV. That as to all bills, whether original, amended, supplemental, or of revivor, now filed or to be filed, whenever a party may desire to make an application to a Master under the said Act, or under these orders, or whenever it shall be necessary to make any reference to any Master, and no previous application or reference to any Master has been made in the said cause, the name of the Master in rotation shall be ascertained, and entered in books to be kept as after directed in the manner hereinafter mentioned; and all applications authorised by the said recited Act, or by these orders, to be made to a Master; and every such reference as aforesaid shall be made to the said Master in rotation.

XVI. That as to all bills which shall have been filed before this day, where any reference has been made in the cause, the name of the Master to whom the last reference was made in such cause shall, at the request of either of the parties thereto, or of his or her solicitor, and on producing such order of reference, with the Master's name certified thereon, or appearing therein, be added by the six clerk to the original entry of the cause in the six clerk's book, and entered in the book to be kept as hereinafter directed, before any application under the said recited Act shall be made in that cause; and all such applications, and all such references as aforesaid, shall be made to such last-mentioned Master.

XVII. That in all cases where it shall become necessary to ascertain the name of the Master in rotation, for the purposes of the two preceding or any succeeding orders, one of the six clerks shall give to the solicitor for the plaintiff or defendant requiring the

same, a certificate of the bill filed, which certificate shall, on the same or the following day, be marked by the Master of the day at the Public Office in Chancery, with the name of the Master in rotation for such cause ; and such certificate, so marked, (having first been produced to the said Master in rotation, who shall cause a minute thereof to be taken), shall, on the same day, be returned to the six clerk, and filed by him ; and he shall add the name of such Master to the original entry of the cause in the six clerk's book, and shall also cause the name of the cause and of such Master to be entered in a book to be kept by the six clerks for that purpose in the Six Clerks' Office, and which shall be open to inspection at all times during the office hours without fee.

XVIII. That where a defendant who is not in contempt, or has not entered his appearance with the registrar in manner hereinafter mentioned, submits to answer exceptions taken to a first answer, before any order to refer the same has been obtained, he shall be allowed, as of course, and without order, four weeks in a town cause, and six weeks in a country cause, to put in a further answer thereto ; but if such order of reference has been obtained and served prior to such submission, then the Master to whom the reference has been made shall fix the time which shall be allowed the defendant to put in such further answer.

XIX. That the Master to whom any exceptions to an answer for insufficiency shall be referred, shall be at liberty, in making a report upon such exceptions, if he shall think fit, to certify by whom, and in what proportions (if any) the costs of such exceptions and of the reference thereon ought to be borne ; and that upon the taxation of the general costs in the cause, under the twenty-eighth order, pronounced on the 3d April, 1828, regard shall be had to such certificate, and the costs to be allowed to either party shall be taxed and apportioned accordingly.

XX. That all special applications for leave to withdraw replication, as well as to amend bill, shall be heard and determined by such Master in rotation; and such applications, and all other special applications under the said recited Act, shall be made by taking out a warrant, at the foot whereof a notice shall be written, specifying the object of the application; and the same shall be served two clear days before the return thereof.

XXI. That in every order granted by a Master for further time to answer, it shall be made a condition of such order that the defendant shall enter his appearance with the registrar and consent to a serjeant-at-arms, as in the case of a commission of rebellion returned "*non est inventus*," unless under any special circumstances the said Master shall otherwise direct, and which circumstances shall be shortly stated in the order.

XXII. That all orders to refer an answer, or other pleading or matter depending before the Court for scandal or impertinence, shall contain a direction to the Master to expunge any such scandalous or impertinent matter as he shall certify to be contained therein, and which shall have been the subject of the reference; and the Master shall be at liberty, without further order, to tax the costs of such reference and consequent thereon, and to direct by whom the same shall be paid, and the same shall be recoverable by subpoena; but such scandalous or impertinent matter shall not be expunged, nor costs taxed, until the expiration of four days from the filing of the report of such scandal or impertinence, in order that the adverse party may have an opportunity to file exceptions to such report.

XXIII. That the said Masters shall, on all applications to them, or either of them, by warrant under the said recited Act, or under these orders, or either of them, be at liberty to direct, and shall accordingly, in

the orders made thereon, order and direct whether the costs of the application shall be costs in the cause, or whether such costs, or any part thereof, shall be paid by any of the parties personally; and in the latter case, the said Masters respectively shall, in such orders, either fix the sum to be paid for such costs, or tax the same, at their discretion; and the party to whom such costs are directed to be paid, shall be entitled to sue out a subpoena for the same.

XXIV. That the Master to whom any such application or reference as aforesaid shall be made, shall draw up the orders thereon in a short form, and the same, when signed by him, shall be entered in a book to be kept for that purpose in the office of such Master, and shall then be marked by the said Master, or his chief clerk, as entered, and he shall sign his initials thereto in this form: "Ent. A. B.;" and the said orders shall then be binding (unless reversed or varied on appeal), and shall be enforced in like manner as if made by the Court; and the original order, or any duplicate thereof, which the Master is directed to grant on the application of any party, so signed and entered as aforesaid, shall be a sufficient warrant to every officer of the Court to do the act therein mentioned, or to permit the same to be done; and each party shall be at liberty to inspect the entry of all such orders in the said entering book, without fee.

XXV. That in case it shall become necessary to make any application to a Master under the said recited Act, during the period between the last seal after Trinity Term, and the seal next before Michaelmas Term, such application shall be made to the sitting Master of the vacation, and his decision and order thereon shall be equally binding, and acted upon and enforced in the same way and manner as if made by the Master in rotation, to whom the same has or ought otherwise to have been referred; but all subsequent

applications, and all references in the cause shall be made to such Master in rotation.

XXVI. That a defendant shall not be at liberty to serve a notice of motion to dismiss for want of prosecution, until after the time limited by the rules of the Court within which a plaintiff may obtain an order to amend, as to such defendant, shall have expired, any thing in any former order contained to the contrary notwithstanding.

XXVII. That each registrar shall attend in succession the three several Courts of the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellor.

That for the purpose of avoiding as much as may be, expense and delay in the drawing of the decrees and orders of this Court, it is hereby directed that, except in orders for special injunctions, in which the usual recitals shall be inserted as heretofore, neither the bill nor answers, nor any part thereof, be stated or recited in the original decree or order; and that no part of the Master's report be stated in any decree upon further directions, except the Master's finding, or opinion upon the subject referred to him; and that in orders made upon petitions, no part of the petition be stated or recited, except the prayer; and that the same principle of brevity be observed in all the orders of this Court made upon motion, so far as may be consistent with a statement explaining the grounds upon which the order is made. And for the better understanding of this order, certain forms of decrees and orders drawn pursuant hereto are subjoined. And it is hereby directed that such forms shall be observed in all cases as nearly as may be, and that before any order made on a petition be passed, the original petition be filed with the clerk of the reports.

XXVIII. That in all cases where any sums of money, or any securities, or other effects belonging to the suitors of the Court of Chancery, shall be directed

to be paid into or deposited in the Bank of England, in the name and with the privity of the accountant-general of the said Court; and in all cases where any such sum of money, or any securities, or other effects be directed to be paid out, or invested in the purchase of securities, transferred, or carried over, or delivered out, the exact sum of money and amount of securities so to be paid out, invested, transferred, or carried over, be ascertained by the registrar, and specified and expressed in the order of Court, in words written at length, except in the case of residues of money or securities remaining after a portion directed to be applied for particular purposes, the amount of which cannot be ascertained at the time of making the said order, in which cases the order shall direct that the amount of such residues and shares of residues shall be ascertained and specified by affidavit.

And that in all cases where a residue of cash or securities shall be directed by any order to be operated upon by the accountant-general, the exact amount of such residue, where the same can be done, shall be ascertained by the registrars, and expressed and specified in the order in words at length, so that the amount of such residue shall appear on the face of the order.

And that all persons (whether representatives or others) who shall be directed to pay in, transfer or deposit any sum of money, securities, or other effects in the name of the accountant-general—and all persons (whether representatives or others) to whom any sums of money, securities, or other effects shall be directed to be paid out, transferred, carried over, or delivered out by the accountant-general—shall be described by name, except in the case of bodies corporate, companies, or societies, in such order, and not merely as plaintiffs, or petitioners, or the like, except in cases of payments, transfers, or carryings over, directed to be made to or by representatives, where no probate or letters of administration shall have been taken out at

the time of making such orders ; and the christian and surnames, or titles of honour of all such persons, and the titles of all such bodies corporate, companies, and societies, shall be written at length, and without abbreviations in such order.

That in all orders directing the payment of dividends and annuities, the time when the first of such payments shall be made, and when all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise shall be made, shall be specified and expressed in words at length.

That all Orders directing the laying out of sums of money of uncertain amount in the purchase of securities, do direct that such investments shall be made when the money shall amount to a competent sum, and not sooner.

That in all cases where it shall be referred to a Master of the Court of Chancery to ascertain and apportion the amount of money or securities to be paid into the Bank of England in the name and with the privity of the accountant-general, and of any securities to be carried over or transferred to the accountant-general, or to ascertain or apportion the amount of money to be paid out or invested in the purchase of securities to be paid out, or of securities to be sold, carried over, or transferred by the accountant-general, the exact amount of such money or securities respectively shall be ascertained by the Masters and stated in the report in words at length, except in the case of residue of money or securities remaining after a portion directed to be applied to certain purposes, and the amount of which portions cannot be ascertained at the time of making such report, in which case the amount of such residue and portions shall be ascertained by affidavit.

And that in all cases where a residue of cash or securities shall be directed by an Order to be operated upon by the accountant-general, the exact amount of such residue, where the same can be done, shall be ascertained by the Masters, and expressed and specified

in the Order in words at length, so that the amount of such residue shall appear on the face of the Order.

And in all such cases, the persons by or to whom money is to be paid, or securities carried over or transferred as aforesaid, shall be described by name, except in the case of bodies corporate, companies, or societies, in such reports, and not merely as plaintiffs or petitioners or the like, except in the cases of payments, transfers, or carryings over, directed to be made to or by representatives, where no probate or letters of administration shall have been taken out at the time of making the said report, and the christian and surnames or titles of honour of all such persons, and the titles of all such bodies corporate, companies, and societies, shall be written at full length in the said report.

XXIX. That with a view to the convenience of the suitors and their solicitors, and for the purpose of diminishing the expense of Orders on petitions of course, which, according to the practice of the Court, may be presented to the Master of the Rolls, one of the secretaries of the Master of the Rolls shall, upon any such petitions of course (except upon petitions for setting down causes to be reheard), which shall be presented to his Honour, instead of answering such petitions as heretofore, draw up the Orders thereon in such form as the Master of the Rolls shall from time to time direct, every such Order to be signed as passed with the initials of such secretary; and the under-secretary shall enter, or cause to be entered, every such Order in a book to be kept at the secretaries office at the Rolls for that purpose, and shall then mark and sign such Order with his initials, as entered; and the suitors of the Court and their solicitors shall have access to the said book, during office hours, without the payment of any fee; and for every such Order so to be made as aforesaid there shall be paid the same fees as have hitherto been payable in respect of such petitions as aforesaid, in lieu of the fees on such petitions. And there shall be also paid to the chief secretary, for filing

every such petition, the sum of one shilling: and to the under-secretary, for entering every such Order, the sum of sixpence. And every such Order so to be made as aforesaid, shall have the same force and effect as Orders of course passed by the registrars now have, and without the payment of the fees heretofore payable on such Orders at the registrar's office; and for every office copy that may be required by any such Order, there shall be paid to the chief secretary (who shall mark the same as examined, and authenticate it by affixing his initials thereto) the sum of sixpence, and no more, for making the same.

XXX. That the duties to be performed in the office of the Master of reports and entries shall be carried on as the same was heretofore done by the Master of the Report Office; and that all Decrees and Orders of the High Court of Chancery shall be entered by the clerks of entries under the direction of the Master of reports and entries.

That proper calendars or indexes shall be kept by the clerks of entries, so that the same may be conveniently referred to when required; and such calendars or indexes, and the books of entry shall, at all times during office hours, be accessible to the public, on payment of the usual fees.

That all reports, and exceptions to reports and petitions shall be left with the clerk of reports, to be by him filed or preserved under the direction of the Master of reports and entries, and all office copies thereof, or of any part thereof, that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken; and that all Decrees and Orders shall be entered within one week after the same shall be left for entry, and that all such entries shall be examined by one of the clerks of entries, and be marked with his initials, to denote such examination.

That proper indexes or calendars to the files or bundles of the reports and exceptions to reports and

petitions shall be kept, so that the same may be conveniently referred to when required; and such calendars and indexes, and the said original reports and exceptions to reports and petitions shall, at all times during office hours, be accessible to the public, on payment of the usual fees.

That in addition to such calendars the said clerks of reports shall enter in a book, to be kept by them for that purpose, the time when any report and set of exceptions is delivered to them to be filed, with the name of the cause and the date of the report, and, as regards exceptions, the names of the parties excepting, and such book shall, at all times during office hours, be accessible to the public.

XXXI. That all office copies in all the offices of the Court shall be written on foolscap paper bookwise, and shall contain two folios in each page, except as to office copies of bills, which shall contain only one folio, such folios to consist of ninety words each, and to be reckoned as to schedules according to the manner directed by the General Order of this Court, bearing date the 28th day of November, 1743.

XXXII. That the last interrogatory now commonly in use be in future altered, and shall stand and be in the words or to the effect following:—"Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or to the matters in question in this cause, if yea, set forth the same," &c.

XXXIII. That the Masters extraordinary of this Court shall be at liberty in future to take any affidavit, or do any other act incident to the office of Master extraordinary in Chancery, at any place which is distant not less than ten miles from the Hall in Lincoln's Inn, any existing order to the contrary notwithstanding.

XXXIV. That the fees set forth in the Schedule after stated shall constitute the Schedule of fees to be received by the Masters and their clerks, and the registrars and their clerks, under the said recited Act. [Fees allowed by Order, 27th February, 1837. See folio 35.]

XXXV. That except as may be herein otherwise directed, the officers of this Court shall continue open for the dispatch of business, and the officers and clerks belonging thereto shall attend in such offices in the discharge of their business, during such times and for such number of hours in each day as they have hitherto done under any existing order or practice of the said Court.

XXXVI. That the office of the clerk of the affidavits and of the patentee of the subpoena office be open from the hour of ten in the forenoon until four in the afternoon, and, during the sitting of either of the Courts, from the hour of seven to eight in the evening, except that from the 1st of September to the 20th of October those offices shall be open only from eleven to one o'clock.

That all copies of affidavits be ready for delivery within forty-eight hours after any copy shall be bespoken.

FORM OF SUBPŒNA TO APPEAR AND ANSWER.

WILLIAM the FOURTH by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To

Greeting.

We command you [and every of you, *where more than one defendant*], that within [four days, *if a town cause, or "eight days," if a country cause*] days after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our High Court of Chancery to a bill, [*or, as the case may be, "information,"*] [*or "to an amended bill," or "information,"*] [*or "of revivor," or*

"revivor and supplement,") [or "supplemental bill,"] filed against you by ["and others" or "another,"] and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said Court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process for contempt as the Court shall award. Witness ourself at Westminster the day of in the year of our reign.

COURTENAY.

[*The following memorandum to be placed at the foot.*]

Appearances are to be entered at the Six Clerks' Office, Chancery-lane, London.

FORM OF SUBPÆNA TO REJOIN.

WILLIAM, &c.

To

Greeting.

We command you [and every of you] that immediately after the service of this writ you do appear in our High Court of Chancery, then and there to rejoin and join in commission, if thereunto required, in a certain cause there depending, wherein ["and others" or "another"] are plaintiffs, and ["and others" or "another"] are defendants.

Witness, &c.

COURTENAY.

FORM OF SUBPÆNA TO HEAR JUDGMENT.

WILLIAM, &c.

To

Greeting.

We command you [and every of you] that you appear before our Lord High Chancellor, [or "before his Honor the Master of the Rolls," or "before his Honor the Vice Chancellor," as the cause may be set down,] on the day of next or whenever thereafter a certain cause now depending in our High Court of Chancery, wherein ["and others" or "another"] are plaintiffs, and ["and others" or "another"] are defendants, shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then and thereafter be made and pronounced, upon pain of judgment being pronounced against you by default.

Witness, &c.

COURTENAY.

FORM OF SUBPENA FOR COSTS.

WILLIAM, &c.

To

Greeting.

We command you [and every of you] that you pay or cause to be paid immediately after the service of this writ to or the bearer of these presents, £ costs, by our Court of Chancery adjudged to be paid by you to the said under pain of an attachment issuing against your person, and such process for contempt as the Court shall award in default of such payment.

Witness, &c.

COURTENAY.

FORM OF SUBPENA TO TESTIFY VIVA VOCE IN COURT, OR TO TESTIFY BEFORE THE MASTER.

WILLIAM, &c.

To

Greeting.

We command you [and every of you] that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before our Lord High Chancellor, [or "before his Honor the Master of the Rolls," or "the Vice Chancellor," or "before Mr. one of the Masters of our High Court of Chancery," or "before and commissioners named in a commission issued to them for that purpose,"] at such time and place as the bearer hereof shall by notice in writing appoint, to testify the truth according to your knowledge in a certain suit now depending in our High Court of Chancery, wherein ["and others" or "another"] are plaintiffs, and ["and others" or "another"] are defendants. On the part of the [in case of subpoena duces tecum, add "and that you then and there bring with you and produce," &c.] And hereof fail not at your peril.

Witness, &c.

COURTENAY.

FORM OF SUBPENA AD TEST. AND DUCES TECUM.

WILLIAM, &c.

To

Greeting.

We command you [and every of you] that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before Mr. one of the examiners of witnesses in our High Court of Chancery, at his office in Rolls' Yard, Chancery-lane, London, at such times as the bearer hereof shall by notice in writing appoint, [or "before and others, commissioners appointed

for the examination of witnesses in our Chancery, at such times and places as the bearer hereof shall by notice in writing appoint,"] to testify to the truth according to your knowledge in a certain cause depending in our said Court of Chancery, wherein [“and others” or “another”] are plaintiffs, and [“and others” or “another”] are defendants, on the part of the [in case of subpoena duces tecum, add “and that you then and there bring with you and produce,” &c.] And hereof fail not at your peril.
 Witness, &c. COURTENAY.

FORM OF SUBPÆNA TO SHOW CAUSE AGAINST DECREE.

WILLIAM, &c.

To

Greeting.

We command you that within _____ days after the service of this writ on you, exclusive of the day of such service, you do show unto our High Court of Chancery, good cause why a certain decree made by _____ on the _____ day of _____ in a certain cause, wherein [“and another” or “others”] are plaintiffs, and [“and another” or “others”] are defendants, should not be binding upon you. In default whereof such decree will stand and be absolute against you.

Witness, &c.

COURTENAY.

THE FORM OF AN ORIGINAL DECREE.

[Date and title.]

This cause coming on this present day to be heard and debated before, &c. in the presence of counsel learned on both sides, and the pleadings in this cause being opened upon debate of the matter and hearing [here state in the usual form a description of the evidence which was read, and what was alleged by the counsel on both sides] his Lordship doth order and decree [or “doth declare”], &c.

THE FORM OF A DECREE UPON FURTHER DIRECTIONS AFTER A MASTER'S REPORT.

[Date and title.]

This cause coming on the _____ day of _____ to be heard and debated before, &c. his Lordship did order and decree or declare [here state the decretal part except the words of course] that in pursuance of the said decree the said Master made his report, bearing date the _____ day of _____ which stands absolutely confirmed by an Order dated the _____ day of _____ and thereby found [here state the Master's finding or opinion only]. And this cause coming on this present day to be heard before, &c. for further

directions, and as to the matter of costs reserved in the said decree [if costs be reserved], in the presence of counsel learned on both sides, upon opening and debate of the matter, and hearing the said decree, &c. read, and what was alleged by counsel on both sides, his Lordship doth order, &c.

[The same form to be observed upon the decrees for further directions, mutatis mutandis, where, upon the original hearing, an issue or a case for the opinion of a Court of Law is directed, or the bill is retained for twelve months with liberty to bring an action. The issue and verdict of the jury to be stated at length, but the judge's certificate upon the case only, and not the case itself.]

THE FORM OF AN ORDER UPON PETITION.

Whereas A. B. did on the day of *[Date and title.]*
 petition unto, &c. setting forth as therein set forth, and praying
[here state the prayer], whereupon all parties concerned were ordered
 to attend his Lordship on the matter of the said petition, and counsel
 for the petitioner, and for this day attending accordingly,
 upon hearing the said petition, &c. read, and what was alleged by
 the counsel for the petitioner and the counsel for his Lord-
 ship doth order, &c.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
23d FEBRUARY, 1837.

—♦—

WHEREAS it is expedient that the fees which are by the General Orders for regulating the practice of the Court of Chancery, bearing date the twenty-first day of December, one thousand eight hundred and thirty-three, directed to be taken by the Masters and their clerks, and the Registrars and their clerks, under the Act passed in the third and fourth years of the reign of his present Majesty, intituled "An Act for the Regulation of the Proceedings and Practice of certain Offices of the High Court of Chancery in England," should be varied and increased, or reduced in amount, or wholly omitted to be received, as hereinafter mentioned; Now I, the Right Honourable Charles Christopher Baron Cottenham, Lord High Chancellor of Great Britain, with the advice and concurrence of the Right Honourable Henry Baron Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Knight, Vice-Chancellor of England, do hereby order and direct, that from and after the twenty-seventh day of February instant, the fees set forth in the first Schedule hereunto shall be the fees to be received and taken by the clerks to the Masters in Ordinary, in the place and stead of the fees now received and taken by them, pursuant to the said general Orders, bearing date the twenty-first day of December, one thousand eight hundred and thirty-three; AND THAT the fees set forth in the second Schedule hereunto shall be the fees to be received and taken by the Registrars and their clerks, in the place and stead of the fees now received and taken by them, pursuant to the said General Orders.

FIRST SCHEDULE.

*Fees to be received and taken by the Clerks to the Masters
in Ordinary.*

	£	s.	d.
For every warrant	0	3	0
For drawing every report, exclusive of schedules of accounts of parties accounting before the Master, and exclusive of the fee on signing, per folio	0	1	0
For drawing schedules of accounts of parties accounting before the Master, per folio	0	0	6
On signing every report and certificate	1	0	0
For investing every title brought in before the Master to be settled, and perusing the abstract thereof, upon the first 25 folios thereof	0	6	8
And upon every succeeding 25 folios thereof	0	3	4
For every advertisement issued by the Master	1	1	0
Upon every peremptory advertisement for the sale of property with the approbation of the Master, in addition to the foregoing fee, to be repaid if the property shall not be offered for sale	3	0	0
(In addition to the reasonable travelling expenses of the Master's clerk, to be received and retained by him.)			
For signing the allowance of every deed, recognizance, set of interrogatories, account, or other document allowed and signed by the Master	0	5	0
For every order upon a warrant	0	5	0
For perusing and settling the draft of every deed brought before the Master to be settled (except lease for a year), where such deed shall not exceed 30 folios	1	0	0
Where such deed shall exceed 30 folios and not exceed 50 folios	1	10	0

	£	s.	d.
And where such deed shall exceed 50 folios and not exceed 100 folios	2	10	0
And where such deed shall exceed 100 folios	3	0	0
Fee on preparing every recognizance	1	1	0
For taking the acknowledgement of any deed	0	6	0
For taking the acknowledgement of every married woman, or such other fee as the Court of Common Pleas at Westminster shall order to be paid for taking such ac- knowledgement	1	6	8
For an examination fee on each witness, ex- clusive of oath	0	5	0
For examining the engrossments of deeds, each skin	0	3	4
For comparing deeds, books, and papers with the schedule on their being deposited or delivered out, where the schedule shall not amount to 50 folios	0	6	8
Where the schedule shall amount to 50 folios	0	13	4
For attending any Court per day by the clerk	0	13	4
For searching for papers in a cause or matter not in immediate progress before the Mas- ter	0	6	8
For every oath	0	1	6
For entering account for receivers, consig- nees, and committees, per folio in each book	0	0	6
For entering accounts of parties accounting before the Master in a book, if required, per folio	0	0	6
For every exhibit	0	2	6
Where a Master shall be required to attend a party to administer an oath, there shall be paid a further fee of ten shillings over and besides the coach-hire, or reasonable travelling expenses of the Master	0	10	0
For expunging scandal or impertinence out of every record or document referred on every such record or document	1	0	0

SECOND SCHEDULE.

Fees to be received and taken by the Registrars and their Clerks.

	£	s.	d.
For every decree or order on the original hearing of a cause, on further directions, exclusive of the Master of the Rolls' fee on decrees of 6s. 8d.	3	10	0
For every office copy thereof	2	0	0
For every order on petition or motion of course, not exceeding one side	0	3	0
For every additional side of such order	0	1	0
For every order on other petitions where a reference is directed, but the decision of the Master is not to be final, and also where the petition is dismissed	0	10	0
For every office copy thereof	0	10	0
For every order for a special injunction, or for the appointment of a receiver	2	10	0
For every office copy thereof	0	10	0
For every order for payment of money out of Court, and for no other purpose, where the sum or sums thereby specifically directed to be paid shall not exceed in the whole 100 <i>l</i>	0	10	0
For every office copy thereof	0	5	0
For every order for transfer out of Court, or sale, of any sum or sums of Government stock, or South Sea annuities (excepting long annuities and annuities for terms of years) and for no other purpose, where the sum or sums thereby specifically directed to be transferred or sold shall not exceed in the whole 100 <i>l</i> . stock or annuities	0	10	0
For every office copy thereof	0	5	0

£ s. d.

For every order for payment out of Court of any annuity or annuities, not exceeding in the whole 5 <i>l.</i> per annum, or if any interest or dividends upon stock or annuities, not exceeding in the whole 5 <i>l.</i> per annum, and for no other purpose	0	10	0
For every office copy thereof	0	5	0
For every other order for payment or transfer out of Court	2	10	0
For every office copy thereof	1	0	0
For every other order on special motions	1	0	0
For every office copy thereof	0	10	0
For every order on arguing exceptions	2	0	0
For every office copy thereof	1	0	0
For every order on arguing pleas and demurrers	1	0	0
For every office copy thereof	0	10	0
For every order on petition of appeal or rehearing	2	0	0
For every office copy thereof	1	0	0
For every order on petitions not herein otherwise specified	2	0	0
For every office copy thereof	1	0	0
For every order in any matter in Lunacy	0	10	0
For every office copy thereof	0	5	0
For every order in any matter in Bankruptcy	0	10	0
For every office copy thereof	0	5	0
For every copy of a petition of appeal or rehearing, per side	0	0	6
For every certificate signed by the Registrar for the sale or transfer of annuities, stock, or Exchequer bills, or for delivery out of the latter	0	2	6
For every other certificate signed by the Registrar	0	1	0
For every copy of minutes of any decree or order, per side	0	1	0
For every exhibit proved <i>viva voce</i> in Court	0	2	6
For entering every plea of demurrer	0	1	0

	£	s.	d.
For setting down causes, exceptions, further directions, pleas and demurrers, each (except for setting down causes on the Registrar's days)	0	1	0
For setting down causes on the Registrar's days, each	1	1	0

COTTENHAM, C.
 LANGDALE, M. R.
 LANCELOT SHADWELL, V. C.

GENERAL ORDER
OF
THE COURT OF CHANCERY,

5th MAY, 1837.

—◆—

*ORDER for better regulating the HEARING OF CAUSES
and other Matters in the High Court of Chancery.*

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, doth hereby order and direct in manner following; that is to say—

I. That from and after the 20th day of May, now instant, every original information or bill of complaint filed in the High Court of Chancery, shall (at the option of the party, informant or complainant, by or on whose behalf the information or bill shall be filed), be distinctly marked at or near the top or upper part thereof, either with the words "Lord Chancellor," or with the words "Master of the Rolls:" and that the six clerk and clerk in court to whom the filing of the information or bill belongs, shall, in the books and indexes in which the same shall be entered, add to the entry thereof such distinguishing words or mark as may make it appear from such entry whether the information or bill is marked with the words "Lord Chancellor," or with the words "Master of the Rolls:" and that, from and after the said 20th day of May, the six clerks and clerks in court are not to file any original

information or bill of complaint which shall not be marked in the manner hereinbefore directed.

II. That, in every cause in which the original information or bill shall be marked with the words "Lord Chancellor," or with the words "Master of the Rolls," the six clerk to whom it belongs to give or sign the certificate that the cause is ready for hearing shall, upon being applied to for such certificate, see that the same certificate is marked, or cause the same to be marked, with the words "Lord Chancellor," or with the words "Master of the Rolls," in conformity with the like words marked on the original information or bill.

III. That in every cause now in Court, but which has not yet been set down for hearing, the clerk in court, who, on the behalf of the informant, or of the plaintiff or defendant, shall, at any time after the 20th day of May instant, apply to the six clerk to set down the cause for hearing, or for the certificate that the cause is ready for hearing, shall state or certify to such six clerk whether any orders or order disposing of any pleas or plea, demurrers or demurrer, or any special orders or order upon merits shown by answer or by affidavits, have or has been made in the cause, or (in case no such order as aforesaid has been made) whether the party on whose behalf the application is made desires the cause to be heard before the Lord Chancellor or the Master of the Rolls; and in case the clerk in court so applying shall certify that any such order as aforesaid has been made by the Lord Chancellor or Vice Chancellor, and not by the Master of the Rolls, or that such orders as aforesaid have been made by both the Lord Chancellor or Vice Chancellor, and the Master of the Rolls, but that the last of such orders has been made by the Lord Chancellor or Vice Chancellor, or (in case no such order has been made in the cause) that the party desires the cause to be heard before the Lord Chancellor, the six clerk giving the

certificate shall see that the same certificate is marked, or shall cause the same to be marked, with the words "Lord Chancellor;" and the six clerk and clerk in court shall cause the entries of the cause in their books and indexes to be marked with such distinguishing words or marks as shall signify that the cause is to be heard before the Lord Chancellor; and in case the clerk in court so applying as aforesaid shall certify that any such order as aforesaid has been made by the Master of the Rolls and not by the Lord Chancellor or Vice Chancellor, or that such orders as aforesaid have been made by both the Lord Chancellor or Vice Chancellor and the Master of the Rolls, but that the last of such orders has been made by the Master of the Rolls, or (in case no such order as aforesaid has been made in the cause) that the party desires the cause to be heard before the Master of the Rolls, the six clerk giving the certificate shall see that the same certificate is marked, or shall cause the same to be marked, with the words "Master of the Rolls;" and the six clerk and clerk in court shall cause the entries of the cause in their books and indexes to be marked with such distinguishing words or marks as shall signify that the cause is to be heard before the Master of the Rolls.

IV. That the registrars of the Court, and the secretaries of the Lord Chancellor and of the Master of the Rolls, are not at any time after the said 20th day of May instant, to set down to be heard any cause in which the certificate of the cause being ready for hearing shall not be marked in the manner directed by the 2nd and 3rd Orders, and are not, after the date of these Orders, to set down to be heard before the Master of the Rolls any cause, further directions, or exceptions, which is or are now set down to be heard before the Lord Chancellor, and are not, without special order of the Lord Chancellor, to set down to be heard before the Lord Chancellor any cause, further directions, or exceptions, which is or are now set down to be heard before the Master of the Rolls.

V. That in every petition praying that a day may be appointed for arguing a plea or demurrer put in to any information or bill filed on or after the said 20th day of May, it shall be stated whether the information or bill to which such plea or demurrer is put in is marked with the words "Lord Chancellor," or with the words "Master of the Rolls."

VI. That, from and after the said 20th day of May instant, the several causes and matters hereinafter mentioned, not already set down, shall be set down to be heard before the Lord Chancellor, and shall not without special order of the Lord Chancellor be set down to be heard before the Master of the Rolls.

1. Every plea or demurrer, and all exceptions in any cause in which the information or bill shall be marked with the words "Lord Chancellor," or in which the entries of the cause in the Six Clerks' Books shall be so marked as to signify that the same is to be heard before the Lord Chancellor.

2. Every cause in which the certificate of the cause being ready for hearing shall be marked with the words "Lord Chancellor."

3. Every cause requiring to be heard for further directions, or on the equity reserved, and in which the Master's report has been or shall be made, or a trial at law has been or shall be had, or the certificate of a court of common law has been or shall be obtained in pursuance of a decree or order pronounced by the Lord Chancellor or Vice Chancellor.

4. Every exception or set of exceptions taken to any report made by a master in ordinary, in pursuance of a decree, or an order of reference (not being an order obtained as of course), made by the Lord Chancellor or the Vice Chancellor.

VII. That, from and after the said 20th day of May instant, every petition presented or motion made under or pursuant to the liberty to apply contained in any

decree or decretal order of the Lord Chancellor or Vice Chancellor, shall, as to petitions, be addressed to and set down to be heard before the Lord Chancellor, and shall, as to motions, be made before the Lord Chancellor or Vice Chancellor, and that no such petition or motion shall, without special order of the Lord Chancellor, be addressed to or made before the Master of the Rolls.

VIII. That all such pleas, demurrers, causes, further directions, exceptions, and petitions, to be so set down to be heard before the Lord Chancellor, as hereinbefore is directed, shall be heard and determined in the same manner, and be subject to the same rules, as pleas, demurrers, causes, further directions, exceptions, and petitions set down before the Lord Chancellor, have heretofore been heard and determined.

IX. That, from and after the said 20th day of May instant, all interlocutory applications by way of motion or petition (other than applications for orders of course), shall, in the several cases hereinafter mentioned, be made to the Lord Chancellor or to the Vice Chancellor, and shall not without special order of the Lord Chancellor be made to the Master of the Rolls; viz. in the several cases following:—

1. Where the original information or bill is marked with the words "Lord Chancellor."

2. Where the cause has not been set down for hearing, and any order disposing of any plea or demurrer or any special order upon merits, shown by answer or by affidavit, has been made in the cause of the Lord Chancellor or Vice Chancellor, and no such order has been made of the Master of the Rolls.

3. Where the cause has not been set down for hearing, and orders disposing of pleas or demurrers or special orders upon merits, shown by answer or affidavit, have been made by both the Lord Chancellor or Vice Chancellor and the Master of the Rolls, but the last of

such orders was made by the Lord Chancellor or Vice Chancellor.

4. Where the cause has been set down for hearing before the Lord Chancellor, either for original hearing or for further directions, or on the equity reserved.

5. Where the decree or last decretal order was made by the Lord Chancellor or Vice Chancellor, except in cases where the decree or last decretal order was made by the Lord Chancellor on a rehearing of a decree or decretal order made by the Master of the Rolls.

X. That, from and after the said 20th day of May instant, the several causes and matters hereinafter mentioned, not already set down, shall be set down to be heard before the Master of the Rolls, and shall not otherwise than for the purpose of rehearing be set down to be heard before the Lord Chancellor.

1. Every plea or demurrer, and all exceptions in any cause in which the information or bill shall be marked with the words "Master of the Rolls;" or in which the entries of the cause in the six clerks' books shall be so marked as to signify that the same is to be heard before the Master of the Rolls.

2. Every cause in which the certificate of the same being ready for hearing shall be marked with the words "Master of the Rolls."

3. Every cause requiring to be heard for further directions or on the equity reserved, and in which the Master's report has been or shall be made, or a trial at law has been or shall be had, or the certificate of a Court of Common Law has been or shall be obtained, in pursuance of a decree or order pronounced by the Master of the Rolls.

4. Every exception, or set of exceptions, taken to any report made by a Master in ordinary, pursuant to a decree or an order of reference (not being an order obtained as of course) made by the Master of the Rolls.

XI. That, from and after the said 20th day of May instant, every petition presented, or motion made, under or pursuant to the liberty to apply contained in any decree or decretal order of the Master of the Rolls, shall be addressed to and set down to be heard, or shall be made, before the Master of the Rolls; and that, except for the purpose of rehearing an order of the Master of the Rolls, no such petition or motion shall be addressed to or made before the Lord Chancellor.

XII. That, from and after the said 20th day of May instant, all interlocutory applications, by way of motion or petition, (other than applications for orders of course), shall, in the several cases hereinafter mentioned, be made to the Master of the Rolls, and shall not, except for the purpose of rehearing an order of the Master of the Rolls, be made to the Lord Chancellor; viz. in the several cases following:—

1. Where the original information or bill is marked with the words "Master of the Rolls."

2. Where the cause has not been set down for hearing, and any order disposing of any plea or demurrer, or any special order upon merits shown by answer or affidavit, has been made in the cause by the Master of the Rolls, and no such order has been made by the Lord Chancellor or Vice Chancellor.

3. Where the cause has not been set down for hearing, and orders disposing of pleas or demurrers, or special orders upon merits shown by answer or affidavit, have been made by both the Lord Chancellor and Vice Chancellor and the Master of the Rolls, but the last of such orders has been made by the Master of the Rolls.

4. Where the cause has been set down for hearing before the Master of the Rolls, either for original hearing or for further directions, or on the equity reserved, and is not now set down to be so heard before the Lord Chancellor.

5. Where the decree or last decretal order was made

by the Master of the Rolls or by the Lord Chancellor, on the rehearing of a decree or decretal order of the Master of the Rolls.

XIII. That the above Orders as to interlocutory applications shall not extend to any applications for orders of course, nor to any petitions presented, or notices of motion given, before the 18th day of May instant.

XIV. That all applications for orders of course to be obtained on petition or motion shall and may be made in the same manner in all respects as if the above Orders had not been made ; but as to all cases in which, according to the 9th preceding Order, interlocutory applications (other than applications for orders of course) are directed to be made before the Lord Chancellor or Vice Chancellor, if any order *nisi*, upon which cause against making the order absolute is to be shown to the Court, shall be obtained as of course from the Master of the Rolls, such cause shall be shown before the Lord Chancellor or Vice Chancellor ; and if any order of reference to the Master in ordinary shall be obtained as of course from the Master of the Rolls, and the Master's report pursuant to such order of reference shall be excepted to, the exceptions thereto shall be heard before the Lord Chancellor or the Vice Chancellor : And in all cases in which, according to the 12th preceding Order, interlocutory applications (other than applications for orders of course) are directed to be made before the Master of the Rolls, if any order *nisi*, upon which cause against making the order absolute is to be shown to the Court, shall be obtained as of course from the Lord Chancellor or Vice Chancellor, such cause shall be shown before the Master of the Rolls ; and if any order of reference to the Master in ordinary shall be obtained as of course from the Lord Chancellor or Vice Chancellor, and the Master's report pursuant to such order of reference shall be excepted to, the exceptions thereto shall be heard before the Master of the Rolls.

XV. That in the interval between the close of the sittings after any term and the commencement of the sittings before or at the beginning of the next ensuing term, application for special orders may be made to any judge of the Court in the same manner as if these Orders had not been made; but that the orders which shall be made in any such interval by the Lord Chancellor, or by the Master of the Rolls, or by the Vice Chancellor, shall, if not made by the judge to whom the application, if made during the ordinary sittings of the Court, would have been made pursuant to the directions contained in these Orders be marked as having been made for such judge, and shall in the future proceedings of the cause be deemed to be the order of such judge in all respects save this,—that no order so made by one judge for another under the circumstances aforesaid shall be reheard for the purpose of being discharged or varied otherwise than by the Lord Chancellor.

XVI. That, from and after the said 20th day of May instant, all matters which under and by virtue of any Act of Parliament or otherwise the Court hath jurisdiction to hear and determine in a summary way, and which shall be in the first instance brought under the consideration of the Court upon a petition presented to the Lord Chancellor, shall in any subsequent stage of the proceedings respecting the same matters be heard and determined by the Lord Chancellor or Vice Chancellor; and that no petition respecting the same matters in any subsequent stage of the proceedings relating thereto, shall, without special order of the Lord Chancellor, be set down to be heard before the Master of the Rolls; and that all such matters as aforesaid which shall be in the first instance brought under the consideration of the Court upon a petition to the Master of the Rolls, shall, in any subsequent stage of the proceedings respecting the same matters, be heard and determined by the Master of the Rolls; and that no

petition respecting the same matters in any subsequent stage of the proceedings relating thereto shall, otherwise than for the purpose of rehearing an order of the Master of the Rolls, be set down to be heard before the Lord Chancellor.

COTTENHAM, *C.*

LANGDALE, *M. R.*

LANCELOT SHADWELL, *V. C.*

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
9th MAY, 1839.

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, doth hereby order and direct in manner following; that is to say,

I. That in all cases in which it shall be alleged that the plaintiff is prosecuting the defendant in this Court and also in some other Court for the same matter, the defendant, in eight days after filing his answer or further answer to the plaintiff's bill, shall be entitled, *as of course*, on motion or petition, to the usual order for the plaintiff to make his election in which Court he will proceed, with the usual directions in that behalf, unless the plaintiff shall, before the expiration of the same eight days, have delivered exceptions to the defendant's answer, or have referred his further answer on former exceptions. And in case the plaintiff shall have delivered such exceptions, or referred the defendant's further answer within such time, the defendant shall be at liberty, by notice in writing to be served on the plaintiff's clerk in court, to require the plaintiff to procure the Master's report on such exceptions within four days from the service of such notice. And if the plaintiff, being so served with such notice, shall not procure the Master's report in four days accordingly, or if the exceptions shall not be allowed, the defendant

shall then be entitled, *as of course*, on motion or petition, to the usual order for the plaintiff to elect in which Court he will proceed, with the usual directions. But in either of such cases the plaintiff shall be at liberty to move that such order may be discharged on the merits confessed in the answer.

II. That the plaintiff in any injunction cause, having obtained the *common injunction to stay proceedings at law*, may (either before or after the answer of the defendant shall be put in, and whether such injunction shall or shall not have been continued to the hearing of the cause), obtain an order, *as of course*, for leave to amend the bill *without prejudice to the injunction*, but that such order shall contain an undertaking by the plaintiff to amend the bill within one week after the date of the order, and in default thereof the order shall become void. And that in case the bill shall be amended pursuant to such order, the defendant shall thereupon, and although he may not have put in his answer to the bill or the amendments thereof, be at liberty to move the Court on notice, to dissolve the injunction, on the ground that the bill as amended does not, even if the amendments be true, entitle the plaintiff thereto.

III. That in case an injunction to stay proceedings at law shall be prayed for by the bill, and shall either not be obtained, or having been obtained, shall have been dissolved upon the merits stated in the answer, and the plaintiff shall afterwards amend his bill, and the defendant shall not plead, answer or demur to the amended bill within eight days after appearance, the plaintiff shall be entitled to move for an injunction, *upon affidavit of the truth of the amendments*.

IV. That foreclosure causes, when ready for hearing, may be ordered to be advanced for hearing, under the same circumstances, and subject to the same rules as other causes may be ordered to be so advanced.

V. That in all cases in which it shall appear that certain preliminary accounts and inquiries must be taken and made before the rights and interests of the parties to the cause can be ascertained, or the questions therein arising can be determined, the plaintiff shall be at liberty, at any time after the defendants shall have *appeared* to the bill, *to move* the Court on notice, that such inquiries and accounts shall be made and taken, and that an order referring it to the Master to make such inquiries, and take such accounts, shall thereupon be made, without prejudice to any question in the cause, if it shall appear to the Court, that the same will be beneficial to such (if any) parties to the cause as may not be competent to consent thereto, and that the same is consented to by such (if any) of the defendants as being competent to consent have not put in their answer to the bill, and that the same is consented to by, or is proper to be made upon the statements contained in the answers of, such (if any) of the defendants as have answered the bill.

VI. That whenever any order *of course*, obtained from the Master of the Rolls in any cause marked for or set down to be heard before the Lord Chancellor, pursuant to the General Order of the 5th day of May, 1837, shall be alleged to have been irregularly obtained, any application to discharge the same for irregularity, shall in the first instance be made to the Master of the Rolls, and such cause, and all other applications to be made therein, shall nevertheless continue subject to all the regulations of the said General Order as if this Order had not been made.

COTTENHAM, C.
LANGDALE, M. R.
LANCELOT SHADWELL, V. C.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
10th MAY, 1839.

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, doth hereby order and direct in manner following; that is to say,

I. That every person to whom, in any cause or matter pending in this Court, any sum of money or any costs have been ordered to be paid, shall, after the lapse of one month from the time when such order for payment was duly passed and entered, be entitled by his clerk in court to sue out one or more writ or writs of *feri facias* or writ or writs of *elegit* of the form hereinafter stated, or as near thereto as the circumstances of the case may require.

II. That upon every such order hereafter to be entered, the entering clerk of this Court, in whose division the same may be, shall, at the request of the party leaving the same, mark the day of the month and year on which the same shall be so left for entry, and no writ of *feri facias* or *elegit* shall be sued out upon any such order, unless the date of such entry shall be so marked thereon as aforesaid.

III. That such writs when sealed shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the superior Courts of

common law belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner in which he doth or ought to execute such like writs, and such writs, when returned by such sheriff or other officer, shall be delivered to the clerks in court, by whom respectively they were sued out, or be left at their respective seats, and shall thereupon be filed as of record in the office of the Six Clerks of this Court. And that for the execution of such writs, such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs issuing out of the superior Courts of common law.

IV. That if it shall appear, upon the return of any such writ of *feri facias* as aforesaid, that the sheriff or other officer hath by virtue of such writ seized but not sold any goods of the person ordered to pay such sum of money or costs as aforesaid, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall be filed as of record, be at liberty by his clerk in court to sue out a writ of *venditioni exponas* in the form hereinafter stated, or as near thereto as the circumstances of the case may require.

V. That on every such writ of *feri facias* and *elegit* so to be issued as aforesaid there shall be endorsed the words, "By the Court," and also thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence or place of business of the solicitor at whose instance the same shall be issued, and the name of the clerk in court issuing the same, and that every such writ be also endorsed for the sum to be levied according to the form used upon like writs issuing out of the superior Courts of common law.

VI. That for every such writ of *feri facias* or *venditioni exponas* so to be issued as aforesaid, there shall

be allowed to the clerk in court issuing the same the sum of eighteen shillings and seven pence, and for every such writ of *elegit* the sum of one pound ten shillings, and that there be allowed to the solicitor at whose instance any such writ of *feri facias*, *elegit*, or *venditioni exponas*, shall be issued the sum of six shillings and eight pence for instructions for the said writ, and that there be also allowed to such solicitor the further sum of six shillings and eight pence for attending to procure a warrant, and for attending to instruct the officer charged with the execution of such writ.

FORMS OF WRITS.

No. I.

Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ , which lately before us in our High Court of Chancery in a certain cause, or certain causes [*as the case may be*], wherein A. B. is plaintiff and C. D. is defendant, or, in a certain matter there depending, intituled, "In the matter of E. F." [*as the case may be*], by a decree or order [*as the case may be*] of our said Court, bearing date the day of was decreed or ordered [*as the case may be*] to be paid by the said C. D. to A. B. And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest upon the said sum of £ at the rate of £4 per centum per annum, from the day of (a). And that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said decree or order [*as the case may be*]. And that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in

(a) The day on which the decree or order was made.

what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness ourself at Westminster the day of
in the year of our reign.

No. II.

Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money and Interest.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of Greeting.

WE command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ , and also interest thereon, at the rate of £4 per centum per annum, from the day of (a), which said sum of money and interest were lately before us in our High Court of Chancery, in a certain cause, or causes [as the case may be], wherein A. B. is plaintiff and C. D. is defendant, or in a certain matter there depending, intituled, "In the matter of E. F." [as the case may be], by a decree or order [as the case may be] of our said Court, bearing date the day of decreed or ordered [as the case may be] to be paid by the said C. D. to A. B. and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said decree or order [as the case may be]. And that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

No. III.

Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money and Costs.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of Greeting.

WE command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £ , which said sum of money was lately before us in our High Court of Chancery,

(a) The day mentioned in the order.

may be] to be paid by the said C. D. to A. B. together with certain costs in the said order mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said Master, dated the day of , and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of £ , together with interest thereon at the rate aforesaid, from the day of (a), and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said decree or order [*as the case may be*]. And that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

No. V.

Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Costs.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WE command you that of the goods and chattels of C. D. in your bailiwick, you cause to be made the sum of £ , for certain costs which were lately before us in our High Court of Chancery, in a certain cause, or certain causes [*as the case may be*], wherein A. B. is plaintiff and C. D. is defendant, or in a certain matter there depending, intituled, "In the matter of E. F." [*as the case may be*], by decree or order [*as the case may be*] of our said Court, bearing date the day of , decreed or ordered [*as the case may be*] to be paid by the said C. D. to A. B., and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the said sum £ , as appears by the certificate of the said Master, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest on the said sum of £ , at the rate of £4 per centum per annum from the day of (a), and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said decree or order [*as the*

(a) The date of the Master's certificate of taxation.

case may be]. And that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

No. VI.

Writ of Elegit, on a Decree or Order of the Court of Chancery for Payment of Money, or Money and Interest.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WHEREAS, lately in our High Court of Chancery, in a certain cause, or certain causes [*as the case may be*], there depending, wherein A. B. and others are plaintiffs and C. D. and others are defendants, or in a certain matter there depending, intituled, "In the matter of E. F." [*as the case may be*], by a decree or order [*as the case may be*] of our said Court, made in the said cause or matter [*as the case may be*], and bearing date the day of , it was decreed and ordered, or ordered [*as the case may be*] that the said C. D. should pay unto A. B. the sum of £ [*if interest be given by the order, say, "together with interest thereon, after the rate of £4 per centum per annum, from the day of ."*] And afterwards, the said A. B. came into our said Court of Chancery, and according to the form of the statute in such case made and provided, chose to be delivered to him, her, or them [*as the case may be*] all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any one in trust for him, was seized or possessed of on the day of in the year of Our Lord (a), or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments, respectively, according to the nature and tenure thereof, to him and to his assigns until the said sum of £ , together with interest thereon, at the rate of

(a) The day on which the decree or order was made.

£4 per centum per annum, from the said day of (a), shall have been levied. THEREFORE WE COMMAND YOU that, without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person in trust for him was seised or possessed of on the said day of (b), or at any time afterwards, over which the said C. D. on the said day of (b), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit. To hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Chancery aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. VII.

Writ of Elegit, on a Decree or Order of the Court of Chancery for Payment of Costs.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WHEREAS, lately in our High Court of Chancery, in a certain cause or certain causes [as the case may be], there depending, wherein A. B. and others are plaintiffs and C. D. and others are defendants, or in a certain matter there depending, intituled, "In the matter of E. F." [as the case may be], by a decree or order [as the case may be] of our said Court, made in the said cause or matter [as the case may be], and bearing date the day of , it was decreed and ordered, or ordered [as the case may be], that

(a) If the order be for money and interest, the day mentioned in the order. If for money only, the day on which the decree or order was made.

(b) The day on which the decree or order was made.

C. D. should pay unto A. B. certain costs as in the said decree or order [*as the case may be*], mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said Master, dated the day of . And afterwards the said A. B. came into our said Court of Chancery, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any one in trust for him, was seised or possessed of on the day of , in the year of our Lord (a), or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards, had any disposing power, which he might without the assent of any other person exercise for his own benefit: to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest thereon at the rate of £4 per centum per annum, from the said day of (a) shall have been levied. THEREFORE WE COMMAND you, that without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him, was or were seised or possessed of on the said day of (a), or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards, had any disposing power, which he might without the assent of any other person or persons exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court of Chancery aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall

(a) The date of the Master's certificate of taxation.

make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. VIII.

Writ of Elegit, on a Decree or Order of the Court of Chancery for payment of Money and Costs.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WHEREAS, lately in our High Court of Chancery, in a certain cause or certain causes [as the case may be] there depending, wherein A. B. and others are plaintiffs and C. D. and others are defendants, or in a certain matter there depending, intituled, "In the matter of E. F." [as the case may be] by a decree or order [as the case may be] of our said Court, made in the said cause or matter [as the case may be] and bearing date the day of , it was decreed and ordered, or ordered [as the case may be], that C. D. should pay unto A. B. the sum of £ , together with certain costs as in the said decree or order [as the case may be] mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the sum of £ ,

as appears by the certificate of the said Master, dated the day of . And afterwards the said A. B. came into our said Court of Chancery, and according to the form of the statute, in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of, on the day of , in the year of our Lord (a) or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ , and £ , together with interest upon the said sum of , at the rate of £4 per centum per annum,

(a) The day on which the decree or order was made.

from the day of (a), and on the said sum of £ at the rate aforesaid, from the day of (b), shall have been levied. THEREFORE WE COMMAND you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him was or were seised or possessed of on the said day of (a), or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards, had any disposing power, which he might without the assent of any other person exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court of Chancery aforesaid immediately after the execution thereof, under your seals and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. IX.

Writ of Elegit, on a Decree or Order of the Court of Chancery for Payment of Money, Interest and Costs.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WHEREAS, lately in our High Court of Chancery, in a certain cause or certain causes [as the case may be] there depending, wherein A. B. and others are plaintiffs and C. D. and others are defendants, or in a certain matter there depending, intituled, "In the matter of E. F." [as the case may be] by a decree or order [as the case may be] of our said Court, made in the said cause or matter [as the case may be] and bearing date the day of , it was ordered and decreed, or ordered [as the case may be] that C. D. should pay unto A. B. the sum of £ , together with interest thereon, after the rate of £4 per centum per annum, from

(a) The day on which the decree or order was made.

(b) The date of the Master's certificate of taxation.

the day of , together also with certain costs, as in the said decree or order [*as the case may be*] mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said Master, dated the day of . And afterwards the said A. B. came into our said Court of Chancery, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any one in trust for him was seised or possessed of on the day of , in the year of our Lord (a), or at any time afterwards, or over which the said C. D. on the said day of (a), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and his assigns, until the said two several sums of £ and £ , together with interest, upon the said sum of £ , at the rate of £4 per centum per annum, from the said day of (b), and on the said sum of £ , at the rate aforesaid from the day of (c), shall have been levied. THEREFORE WE COMMAND you, that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold, or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him, was or were seised or possessed of on the said day of (a), or at any time afterwards, or over which the said C. D. on the said day of (a) or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest as aforesaid, shall have

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- (a) The day on which the decree or order was made.
 (b) The day mentioned in the decree or order.
 (c) The date of the Master's certificate of taxation.

been levied. And in what manner you shall have executed this our writ make appear to us in our Court of Chancery aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. X.

Writ of Venditioni Exponas.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of

Greeting.

WHEREAS by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the Fieri Facias to the end*], and on the day of , you returned to us in our Court of Chancery aforesaid that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. THEREFORE we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you, that you expose to sale and sell or cause to be sold the goods and chattels of the said C. D. by you in form aforesaid taken and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Chancery aforesaid immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness ourself at Westminster, the day of , in the year of our reign.

COTTENHAM, C.

LANGDALE, M. R.

LANCELOT SHADWELL, V. C.

GENERAL ORDER
OF
THE COURT OF CHANCERY,
3d APRIL, 1841.

It is ordered, That in all cases where any stocks or funds are or shall be standing in the name of the accountant-general of the Court, to the general credit of any cause, or to the account of any class or classes of persons, and an order shall be made to prevent the transfer or payment of such stocks or funds, or any part thereof, without notice to the assignee of any person or persons entitled in expectancy or otherwise to any share or portion of such stocks or funds, the person or persons by whom any such order shall be obtained, or the share of such stocks or funds affected by such order, shall, at the discretion of the Court, be liable to pay any costs, charges, and expenses which by reason of such order having been obtained shall be occasioned to any party to the cause, or any person interested in such stocks or funds, and henceforward any person presenting a petition for any such order as aforesaid shall not be required to serve such petition upon the parties to the cause, or upon the persons interested in parts of the stocks or funds not sought to be affected by any such order.

(Signed) COTTENHAM, C.
LANGDALE, M. R.
LANCELOT SHADWELL, V. C.

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GENERAL ORDERS
OF
THE COURT OF CHANCERY,
26th August, 1841.

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, doth hereby, in pursuance of an Act of Parliament, passed in the fourth year of the reign of her present Majesty, intituled, "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an Act passed in the fourth and fifth years of the reign of her present Majesty, intituled, "An Act to amend an Act of the Fourth Year of Her present Majesty, intituled, 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" order and direct in manner following—that is to say,

(a) I. That there shall forthwith be prepared a proper Alphabetical Book, for the purposes after mentioned; and that such book shall be called the Solicitors' Book, and shall be publicly kept at the Office of the Six Clerks, to be there inspected without fee or reward.

II. That every Solicitor, before he practise in this Court in his own name shall be duly entered as after mentioned, and every Solicitor, before he practise as such Agent, shall cause to be entered in the Solicitors' Book, in alphabetical order, his name and place of business, or some other proper place in London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications in causes and

(a) By order of the 19th November, 1841, it is ordered, that this and the four next orders shall not take effect till the first day of Easter term, 1842.

matters depending in this Court; and as often as any such Solicitor shall change his place of business or the place where he may be served as aforesaid, he shall cause a like entry thereof to be made in the Solicitors' Book, and that the above mentioned entries shall be made in such book by the said Six Clerks, who shall be entitled to a fee of one shilling for every such entry; and that the fund arising from such payment shall be applied, in the first instance, in paying the expenses of providing and keeping such book.

III. That all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, which do not require personal service upon the party to be affected thereby, shall be deemed sufficiently served if such document, or a copy thereof, as the case may be, shall be left at the place lastly entered in the Solicitors' Book by the Solicitor of such party; and if any Solicitor shall neglect to cause such entry to be made in the Solicitors' Book as is required by the Second Order, then the fixing up a copy of any such writ, notice, order, warrant, rule, or other document, proceeding, or written communication for such Solicitor in the said Six Clerks' Office, shall be deemed a sufficient service on him, unless the Court shall, under special circumstances, think fit to direct otherwise.

IV. That if any Solicitor shall give his consent in writing that the service of all or any writs, notices, orders, warrants, rules, or other documents may be made upon him through the Post-Office or otherwise, such service shall be deemed sufficient if made in such manner as such Solicitor shall have so agreed to accept; but it shall be competent for any Solicitor giving such consent, at any time to revoke the same by notice in writing.

V. That no person shall be allowed to appear or act, either in person, by Solicitor or Counsel, or to take any proceedings whatever in this Court, either as plaintiff, defendant, petitioner, respondent, party inter-

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OF
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26th AUGUST, 1841.

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(a) I. That there shall forthwith be prepared a proper Alphabetical Book, for the purposes after mentioned; and that such book shall be called the Solicitors' Book, and shall be publicly kept at the Office of the Six Clerks, to be there inspected without fee or reward.

II. That every Solicitor, before he practise in this Court in his own name solely, and not by an Agent, whose name shall be duly entered as after mentioned, and every Solicitor, before he practise as such Agent, shall cause to be entered in the Solicitors' Book, in alphabetical order, his name and place of business, or some other proper place in London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications in causes and

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matters depending in this Court; and as often as any such Solicitor shall change his place of business or the place where he may be served as aforesaid, he shall cause a like entry thereof to be made in the Solicitors' Book, and that the above mentioned entries shall be made in such book by the said Six Clerks, who shall be entitled to a fee of one shilling for every such entry; and that the fund arising from such payment shall be applied, in the first instance, in paying the expenses of providing and keeping such book.

III. That all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, which do not require personal service upon the party to be affected thereby, shall be deemed sufficiently served if such document, or a copy thereof, as the case may be, shall be left at the place lastly entered in the Solicitors' Book by the Solicitor of such party; and if any Solicitor shall neglect to cause such entry to be made in the Solicitors' Book as is required by the Second Order, then the fixing up a copy of any such writ, notice, order, warrant, rule, or other document, proceeding, or written communication for such Solicitor in the said Six Clerks' Office, shall be deemed a sufficient service on him, unless the Court shall, under special circumstances, think fit to direct otherwise.

IV. That if any Solicitor shall give his consent in writing that the service of all or any writs, notices, orders, warrants, rules, or other documents may be made upon him through the Post-Office or otherwise, such service shall be deemed sufficient if made in such manner as such Solicitor shall have so agreed to accept; but it shall be competent for any Solicitor giving such consent, at any time to revoke the same by notice in writing.

V. That no person shall be allowed to appear or act, either in person, by Solicitor or Counsel, or to take any proceedings whatever in this Court, either as plaintiff, defendant, petitioner, respondent, party inter-

vening, or otherwise, until an entry of the name of his Solicitor and his Solicitor's Agent, if there be one, or if he act in person, his own name and address for service shall have been made in the Solicitors' Book at the office of the Six Clerks; but if such address of any person so acting in person shall not be within London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, then all services upon such person not requiring to be made personally, shall be deemed sufficient if a copy of the writ, notice, order, warrant, rule, or other document to be served, be transmitted to him through Her Majesty's Post-Office to such address as aforesaid.

VI. That no Writ of Attachment with proclamations, nor any Writ of Rebellion, be hereafter issued for the purpose of compelling obedience to any process, order, or decree of the Court.

VII. That no order shall hereafter be made for a Messenger, or for the Serjeant-at-Arms, to take the body of the defendant for the purpose of compelling him to appear to the Bill.

VIII. That if the defendant, being duly served with a subpoena to appear to and answer the Bill, shall refuse or neglect to appear thereto, the plaintiff shall, after the expiration of eight days from such service, be at liberty to apply to the Court for leave to enter an appearance for the defendant. And the Court, being satisfied that the subpoena has been duly served, and that no appearance has been entered by the defendant, may give such leave accordingly; and that thereupon the plaintiff may cause an appearance to be entered for the defendant. And thereupon such further proceedings may be had in the cause as if the defendant had actually appeared.

IX. That upon the Sheriff's return, *non est inventus*, to an attachment issued against the defendant for not answering the Bill, and upon affidavit made that due

diligence was used to ascertain where such defendant was at the time of issuing such writ, and in endeavouring to apprehend such defendant under the same; and that the person suing forth such writ verily believed, at the time of suing forth the same, that such defendant was in the county into which such writ was issued, the plaintiff shall be entitled to a Writ of Sequestration, in the same manner that he is now entitled to such writ, upon the like return made by the Serjeant-at-Arms.

X. That no Writ of Execution, nor any Writ of Attachment, shall hereafter be issued for the purpose of requiring or compelling obedience to any order or decree of the High Court of Chancery; but that the party required by any such order to do any act, shall, upon being duly served with such order, be held bound to do such act in obedience to the order.

XI. That if any party who is by an order or decree ordered to pay money, or do any other act in a limited time, shall, after due service of such order, refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such order shall, at the expiration of the time limited for the performance thereof, be entitled to an order for a Serjeant-at-Arms, and such other process as he hath hitherto been entitled to upon a return *non est inventus*, by the Commissioners named in a Commission of Rebellion issued for non-performance of a decree or order.

XII. That every order or decree requiring any party to do an act thereby ordered, shall state the time after service of the decree or order within which the act is to be done; and that upon the copy of the order, which shall be served upon the party required to obey the same, there shall be endorsed a memorandum, in the words or to the effect following; viz.—“If you, the within-named A. B., neglect to perform this order by the time therein limited, you will be liable to be arrested by the Serjeant-at-Arms attending the High Court of Chancery; and also be liable to have your estate se-

questered for the purpose of compelling you to obey the same order."

XIII. That upon due service of a decree or order for delivery of possession, and upon proof made of demand and refusal to obey such order, the party prosecuting the same shall be entitled to an order for a Writ of Assistance.

XIV. That the memorandum at the foot of the subpoena to appear and answer shall hereafter be in the form following; that is to say—"Appearances are to be entered at the Six Clerks' Office in Chancery Lane, London, and if you do not cause your appearance to be entered within the time limited by the above writ, the plaintiff will be at liberty to enter an appearance for you; and you will be subject to an attachment and the other consequences of not answering the plaintiff's Bill, if you do not put in your answer thereto within the time limited by the General Orders of the Court for that purpose.

XV. That every person not being a party in any cause, who has obtained an order, or in whose favour an order shall have been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause.

XVI. That a defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the Bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the Bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

XVII. That the interrogatories contained in the interrogating part of the Bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c., and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the Bill, in the form or to the effect following; that is to say—"The defendant (*A. B.*) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.," and the office copy of the Bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole Bill.

XVIII. That the note at the foot of the Bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the Bill, and the addition of any such note to the Bill, or any alteration in or addition to such note after the Bill is filed, shall be considered and treated as an amendment of the Bill.

XIX. That instead of the words of the Bill now in use preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following:—"To the end therefore—That the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say,"—

1. Whether, &c.
2. Whether, &c.

XX. That a defendant in a country cause shall be

allowed no further time for pleading, answering or demurring to any original or supplemental Bill, or Bill of Revivor, or to any amended Bill, than is now allowed to a defendant in a town cause.

XXI. That after the expiration of the time allowed to a defendant to plead, answer or demur (not demurring alone) to an original Bill, if the defendant shall have filed no plea, answer or demurrer, the plaintiff shall be at liberty to file a note at the Six Clerks' Office to the following effect:—"The plaintiff intends to proceed with his cause as if the defendant had filed an answer, traversing the case made by the Bill, and the plaintiff had replied to such answer, and served a subpoena to rejoin." And that a copy of such note shall be served on such defendant in the same manner as a subpoena to rejoin is now served, and such note when filed (a copy thereof being so served) shall have the same effect as if the defendant had filed an answer traversing the whole of the Bill, and the plaintiff had filed a replication to such answer, and served a subpoena to rejoin. And after such note shall have been so filed, and a copy served as aforesaid, the defendant shall not be at liberty to plead, answer or demur to the Bill without the special leave of the Court.

XXII. That a plaintiff shall not be at liberty to file a note under the Twenty-first Order until he has obtained an order of the Court for that purpose, which order shall be applied for upon motion, without notice, and shall not be made unless the Court shall be satisfied that the defendant has been served with a subpoena to appear and answer the Bill; and that the time allowed to the defendant to plead, answer or demur, not demurring alone, has expired.

XXIII. That where no account, payment, conveyance or other direct relief is sought against a party to a suit, it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the Bill. But the plaintiff shall be at liberty

to serve such party, not being an infant, with a copy of the Bill, whether the same be an original, or amended, or supplemental Bill, omitting the interrogating part thereof: and such Bill, as against such party, shall not pray a subpoena to appear and answer, but shall pray that such party, upon being served with a copy of the Bill, may be bound by all the proceedings in the cause. But this order is not to prevent the plaintiff from requiring a party against whom no account, payment, conveyance or other direct relief is sought, to appear and answer the Bill, or from prosecuting the suit against such party in the ordinary way, if he shall think fit.

XXIV. That where a plaintiff shall serve a defendant with a copy of the Bill under the Twenty-third Order, he shall cause a memorandum of such service, and of the time when such service was made, to be entered in the Six Clerks' Office, first obtaining an order of the Court for leave to make such entry, which order shall be obtained upon motion without notice, upon the Court being satisfied of a copy of the Bill having been so served, and of the time when the service was made.

XXV. That where a defendant shall have been served with a copy of the Bill, under the Twenty-third Order, and a memorandum of such service shall have been duly entered, and such defendant shall not, within the time limited by the practice of the Court for that purpose, enter an appearance in common form, or a special appearance under the Twenty-seventh Order; the plaintiff shall be at liberty to proceed in the cause as if the party served with a copy of the Bill were not a party thereto, and the party so served shall be bound by all the proceedings in the cause, in the same manner as if he had appeared to and answered the Bill.

XXVI. That where a party shall be served with a copy of the Bill under the Twenty-third Order, such party, if he desires the suit to be prosecuted against

himself in the ordinary way, shall be entitled to have it so prosecuted; and in that case he shall enter an appearance in the common form, and the suit shall then be prosecuted against him in the ordinary way. But the costs occasioned thereby shall be paid by the party so appearing, unless the Court shall otherwise direct.

XXVII. That where a party shall be served with a copy of the Bill under the Twenty-third Order, and shall desire to be served with a notice of the proceedings in the cause, but not otherwise to have the same prosecuted against himself, he shall be at liberty to enter a special appearance under the following form—that is to say, “A. B. appears to the Bill for the purpose of being served with notice of all proceedings therein.” And thereupon the party entering such appearance shall be entitled to be served with notice of all proceedings in the cause, and to appear thereon. But the costs occasioned thereby shall be paid by the party entering such appearance, unless the Court shall otherwise direct.

XXVIII. That a party shall not be at liberty to enter such special appearance under the Twenty-seventh Order, after the time limited by the practice of the Court for appearing to a Bill in the ordinary course, without first obtaining an order of the Court for that purpose, such order to be obtained on notice to the plaintiff; and the party so entering such special appearance shall be bound by all the proceedings in the cause prior to such special appearance being so entered.

XXIX. That where no account, payment, conveyance or other relief is sought against a party, but the plaintiff shall require such party to appear to and answer the Bill, the costs occasioned by the plaintiff having required such party so to appear and answer the Bill, and the costs of all proceedings consequential thereon, shall be paid by the plaintiff, unless the Court shall otherwise direct.

XXX. That in all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit. But the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

XXXI. That in suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

XXXII. That in all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

XXXIII. That where a demurrer or plea to the whole Bill shall be overruled, the plaintiff, if he does not require an answer, shall be at liberty immediately to file his note in manner directed by the Twenty-first Order, and with the same effect, unless the Court shall, upon overruling such demurrer or plea, give time to the defendant to plead, answer, or demur; and in such case, if the defendant shall file no plea, answer, or demurrer, within the time so allowed by the Court, the plaintiff, if he does not require an answer, shall, on the expiration of such time, be at liberty to file such note.

XXXIV. That where the defendant shall file a demurrer to the whole Bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within twelve days from the expiration of the time allowed to the defendant for filing such demurrer, cause the same to be set down for argument: and where the demurrer is to part of the Bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such last mentioned demurrer, cause the same to be set down for argument.

XXXV. That where the defendant shall file a plea to the whole or part of a Bill, the plea shall be held good to the same extent and for the same purposes as a plea allowed upon argument, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such plea, cause the same to be set down for argument, and the plaintiff shall be held to have submitted thereto.

XXXVI. That no demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the Bill as it might by law have extended to.

XXXVII. That no demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

XXXVIII. That a defendant shall be at liberty by answer to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer; and that he shall be at liberty so to decline, notwithstanding he shall answer other parts of the Bill from which he might have protected himself by demurrer.

XXXIX. That where the defendant shall by his answer suggest that the Bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry to be made in the Registrar's Book, in the form or to the effect following; (that is to say,) "Set down upon the defendant's objection for want of parties;" and that where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his Bill by adding parties: but the Court, if it thinks fit, shall be at liberty to dismiss the Bill.

XL. That if a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

XLI. That where a defendant in equity files a cross Bill against the plaintiff in equity for discovery only, the costs of such Bill, and of the answer thereto, shall be in the discretion of the Court at the hearing of the original cause.

XLII. That where a defendant in equity files a cross Bill for discovery only against the plaintiff in equity, the answer to such cross Bill may be read and used by the party filing such cross Bill, in the same manner, and under the same restrictions, as the answer to a Bill praying relief may now be read and used.

XLIII. That in cases in which any exhibit may by the present practice of the Court be proved *vidæ voce* at the hearing of a cause, the same may be proved by the

affidavit of the witness who would be competent to prove the same *vidé voce* at the hearing.

XLIV. That where a defendant makes default at the hearing of a cause, the decree shall be absolute in the first instance, without giving the defendant a day to show cause, and such decree shall have the same force and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shown by the defendant.

XLV. That every decree for an account of the personal estate of a testator or intestate shall contain a direction to the Master to inquire and state to the Court what parts (if any) of such personal estate are outstanding, or undisposed of, unless the Court shall otherwise direct.

XLVI. That a creditor, whose debt does not carry interest, who shall come in and establish the same before the Master under a decree or order in a suit, shall be entitled to interest upon his debt, at the rate of £4 per cent. from the date of the decree, out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest.

XLVII. That a creditor who has come in and established his debt before the Master under a decree or order in a suit, shall be entitled to the costs of so establishing his debt, and the same shall be taxed by the Master, and added to the debt.

XLVIII. That in the reports made by the Masters of the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer, shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination, or answer, were so brought in or used.

XLIX. That it shall not be necessary in any Bill of Revivor, or Supplemental Bill, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it.

L. That in any petition of rehearing of any decree or order made by any Judge of the Court, it shall not be necessary to state the proceedings anterior to the decree or order appealed from, or sought to be reheard.

LI. That the foregoing Orders shall take effect as to all suits, whether now depending or hereafter commenced, on the last day of Michaelmas Term, One thousand eight hundred and forty-one.

**COTTENHAM, C.
LANGDALE, M. R.**

GENERAL ORDER
OF
THE COURT OF CHANCERY,
TUESDAY, OCTOBER 12, 1841.

WHEREAS an Act was passed in the fifth year of the reign of her present Majesty, intituled, "An Act to make further Provisions for the Administration of Justice:"—

Now, for giving effect to certain provisions in the said Act for transferring to this Court all suits and matters which, on the 15th day of October instant, shall be depending in her Majesty's Court of Exchequer as a Court of Equity, or under the special authority of any Act or Acts of Parliament, I do hereby order, that every plaintiff and defendant in any suit to be transferred under the authority of the above-recited Act, shall, on or before the said 15th day of October instant, name one of the sworn clerks of this Court to conduct and carry on and act in such suit as clerk in court, according to the usual practice of this Court: and in default thereof, either party to the suit may cause to be served upon the other, a notice in writing, requiring the party served to appoint a clerk in court within seven days after the day of service of such notice, which shall be left at the dwelling-house or usual place of abode of such party; but if such dwelling-house or usual place of abode cannot be ascertained, and affidavit shall be made to that effect, then service of such notice upon the solicitor who was last concerned for such party in the Court of Exchequer shall be deemed good service; and in case, at the expiration of the period so to be mentioned in such notice, no clerk in court shall

have been appointed according to the requisition thereof, then the party giving such notice shall be at liberty to apply to this Court to appoint a clerk in court for the party so making default as aforesaid, and such application may be upon motion or petition without notice; but it shall be supported by an affidavit of such notice as aforesaid having been served, and of the address of the party or solicitor served. And I do hereby further order, that no proceeding shall be taken by any party in any suit so to be transferred as aforesaid until after the appointment of a clerk in court; and that where such appointment shall be made by this Court, the order directing the same shall contain the address of the party so making default in such appointment, or of the solicitor so representing such party as aforesaid, in order that the clerk in court so appointed may be enabled to forward notices and other matters to such party. And I do hereby further order, that so far as regards the taxation and allowance of costs in any of the suits or matters so to be transferred as aforesaid, and which shall not by any order of this Court be directed to be regulated in that particular by the present practice of the Court of Exchequer, such costs shall be taxed and allowed in manner following, that is to say, the costs previously to the said 15th day of October instant shall be taxed and allowed according to the practice of the said Court of Exchequer, and the costs from and inclusive of the said 15th day of October shall be taxed and allowed according to the practice of this Court.

LYNDHURST, C.

GENERAL ORDER
OF
THE COURT OF CHANCERY,
11th NOVEMBER, 1841.

WHEREAS an Act was passed in the fifth year of the reign of her present Majesty, intituled, "An Act to make further Provisions for the Administration of Justice:" and whereas, under the powers in that Act contained, two additional Vice Chancellors have been appointed: now I do hereby order—

I. That in all informations or bills marked under the first order of the fifth day of May, one thousand eight hundred and thirty-seven, with the words "Lord Chancellor," the plaintiff shall, underneath the words "Lord Chancellor," write the title of one of the three Vice Chancellors, at his option; and the cause shall thenceforth, unless removed by some special order of the Lord Chancellor, be attached to such Vice Chancellor's Court.

II. That the title of the Vice Chancellor, to whose Court any cause shall be attached, shall be marked in every certificate granted under the second order of the fifth day of May, one thousand eight hundred and thirty-seven.

III. That, subject in every case to any special order made or to be made by the Lord Chancellor, every cause already heard by any Vice Chancellor since the first day of this present Michaelmas term, be attached to the Court of the Vice Chancellor by whom the same has been heard; and every cause standing in the Lord

Chancellor's book of causes, down to and inclusive of the cause of *Hodges v. Daly*, shall be attached to the Court of the judge to whom the same is appropriated in the said book.

IV. That the plaintiff in every cause now in the Lord Chancellor's Court, whether already heard, standing for hearing, or otherwise, except those mentioned in the last preceding order, shall be at liberty to deliver a notice to his clerk in court, stating the name of the Vice Chancellor, to whose Court he desires such cause to be attached, and to serve notice thereof on all parties to the cause; and in case the plaintiff shall neglect or omit so to do on or before the seventeenth day of November instant, the defendant, or any one of the defendants, shall be at liberty to give such notice; and in case, on the twenty-first day of November instant, no such notice shall have been given, then any person who may be desirous of applying to the Court in such cause, shall be at liberty to give such notice; and that the notice of the plaintiff, if given on or before the said seventeenth day of November instant, or if not so given, then the notice whether of the plaintiff or of any one of the defendants first given after the said seventeenth day of November instant, and before the said twenty-first day of November instant, and the notice of the plaintiff, or of any one of the defendants, or of the person desirous of applying as aforesaid, first given on or after the said twenty-first day of November instant, shall determine the Court to which such cause shall be attached, unless removed therefrom by any special order to be made by the Lord Chancellor; and that no party or person shall move, petition, or take any proceedings until such notice has been given.

V. That all motions, petitions, and further proceedings in causes in the Lord Chancellor's Court, except any motions or proceedings which are now part heard, shall be had before the judge to whose Court the same shall under the provisions of these orders be attached,

unless removed therefrom by any special order of the Lord Chancellor.

VI. That all notices of motion not in any cause, and all petitions not in any cause, which are presented to the Lord Chancellor, shall be marked with the title of one of the Vice Chancellors, and shall thenceforth be attached to such Vice Chancellor's Court, unless removed therefrom by any special order of the Lord Chancellor.

VII. That the registrars shall keep distinct lists of the causes and other matters to be heard before each judge.

LYNDHURST, C.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
17th NOVEMBER, 1841.

THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls; the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England; the Honourable the Vice Chancellor James Lewis Knight Bruce, and the Honourable the Vice Chancellor James Wigram, and in pursuance of an Act passed in the fifth year of the reign of her present Majesty, intituled, "An Act to make further Provisions for the Administration of Justice," doth hereby order and direct in manner following, that is to say,—

I. That any person or persons claiming to be interested in any stock transferable at the Bank of England, standing in the name or names of any other person or persons, or body politic or corporate, in the books of the governor and company of the Bank of England, may, by his or their solicitor, prepare a writ of *distringas*, pursuant to the said Act, in the form set out in the first schedule to the said Act, and may present the same for sealing at the subpœna office.

II. That upon the presentment of such writ for sealing, and on leaving with the patentee of the subpœna office an affidavit, duly sworn by the person or one of the persons applying for such writ, or his solicitor, before one of the Masters or Masters extraordinary of this Court, in the form set out at the foot of these

orders, the same writ shall (in conformity with the orders of this Court for issuing and sealing writs of subpœna) be forthwith sealed with the seal of the subpœna office, and such writ, when sealed, shall have the same force and validity as the writ of *distringas* heretofore issued out of the Court of Exchequer.

III. That such writ of *distringas*, and all process thereunder, may at any time be discharged by the order of this Court, to be obtained, as of course, upon the petition of the party on whose behalf the writ was issued, and to be obtained upon the application by motion or notice, or by petition duly served, of any other person claiming to be interested in the stock sought to be affected by such writ, and that upon or after such application, such costs thereof, and in relation thereto, and to the said writ, as to this Court shall seem just, may, if this Court shall think fit, be awarded and ordered to be paid by the person or persons who obtained such *distringas*, or upon an application by any other person or persons by such person or persons.

IV. That the governor and company of the Bank of England having been served with such writ of *distringas*, and a notice not to permit the transfer of the stock in such notice and in the said affidavit specified, or not to pay the dividends thereon, and having afterwards received a request from the party or parties in whose name or names such stock shall be standing, or some person on his or their behalf, or representing him or them, to allow such transfer, or to pay such dividends, shall not by force or in consequence of such *distringas* be authorised without the order of this Court to refuse to permit such transfer to be made, or to withhold payment of such dividends for more than eight days after the date of such request.

V. That upon leaving such affidavit as aforesaid with the patentee of the subpœna office, there shall be paid to such patentee the sum of one shilling for filing such affidavit. And that within twenty-four hours from

the time when such affidavit shall be so left, the said patentee shall pay the said sum of one shilling to the clerk of the affidavits, and cause such affidavit to be filed and registered at the office of such clerk.

VI. That upon the sealing of such writ of *distringas* the sum of five shillings and sixpence shall be paid to the patentee of the subpœna office, and that out of such sum the said patentee shall pay the sum of four shillings to the accountant-general, to be by him placed to the credit of the account entitled "The Suitors' Fee Fund Account."

VII. That for and in respect of the preparation and service of such writ of *distringas*, and the *præcipe* and attendance in respect thereof, such costs shall be allowed as by the rules and practice of this Court are allowed for the preparation and service and attendance in respect of a writ of subpœna to answer a bill.

FORM OF AFFIDAVIT.

Y. Z. [*the name of the party on whose behalf the writ is sued out*]
v. The Governor and Company of the Bank of England.

I, A. B., of _____, do solemnly swear that, according to the best of my knowledge, information, and belief, I am [*or if the affidavit is made by the solicitor, "C. D., of _____ is"*] *bonâ fide* and beneficially interested in the stock hereinafter particularly described; that is to say, [*here specify the amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing*]. And that I have reason to believe, and do believe, that there is danger of such stock being dealt with in a manner prejudicial to my interest [*or "to the interest of the said C. D.," (as the case may be)*].

(Signed) LYNDHURST, C.
LANGDALE, M. R.
LANCLOT SHADWELL, V. C.
J. L. KNIGHT BRUCE, V. C.
JAMES WIGRAM, V. C.

GENERAL ORDER
OF
THE COURT OF CHANCERY,
19th NOVEMBER, 1841.

—♦—

WHEREAS it is expedient that further orders should be made for the better administration of justice in the Court of Chancery with reference to the matters to which the first, second, third, fourth, and fifth orders of the twenty-sixth day of August last apply, and that in the mean time the operation of the same orders should be suspended: now, therefore, I, the Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls; the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England; the Honourable the Vice Chancellor, James Lewis Knight Bruce; and the Honourable the Vice Chancellor, James Wigram; do hereby in pursuance of an Act of Parliament made and passed in the fourth year of the reign of her present Majesty, intituled, "An Act for facilitating the Administration of justice in the Court of Chancery," and of an Act made and passed in the Session of Parliament held in the fourth and fifth years of the reign of her said Majesty, intituled "An Act to Amend an Act of the Fourth Year of Her present Majesty, intituled, 'An Act for facilitating the Administration of Justice in the Court of Chancery;'" order and direct, that the first, second, third, fourth, and fifth orders of the twenty-sixth day of August last, shall not take effect till the first day of Easter term, one thousand eight hundred and forty-two.

(Signed) **LYNDHURST, C.**
LANGDALE, M. R.
LANCELOT SHADWELL, V. C.
J. L. KNIGHT BRUCE, V. C.
JAMES WIGRAM, V. C.

ADDENDA,
CONTAINING THE ORDERS ISSUED ON
DECEMBER 10TH, 1841,
APRIL 12TH, 1842.

LONDON :
PRINTED BY C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

GENERAL ORDER
OF
THE COURT OF CHANCERY,
10TH DECEMBER, 1841.

THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, the Honourable the Vice-Chancellor James Lewis Knight Bruce, and the Honourable the Vice-Chancellor James Wigram, and in pursuance of an act passed in the fifth year of the reign of her present Majesty, intituled, "An Act to make further Provisions for the Administration of Justice," doth hereby order and direct in manner following, that is to say—

That the affidavit required by the second of the Orders of the 17th day of November, 1841, shall, instead of being in the form set out at the foot of those Orders, be in the form following:—

A. B. [*the name of the party or parties in whose behalf the writ issued out*] v. The Governor and Company of the Bank of England.

I, of , do solemnly swear that, according to the best of my knowledge, information and belief, I am [*or, if the affidavit is made by the solicitor, A. B. of , is*] beneficially interested in the stock hereinafter particularly described, that is to say [*here specify the amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing*].

(Signed) LYN DHURST, C.
 LANGDALE, M. R.
 LANCELOT SHADWELL, V. C.
 J. L. KNIGHT BRUCE, V. C.
 JAMES WIGRAM, V. C.

GENERAL ORDERS
OF
THE COURT OF CHANCERY,
11TH APRIL, 1842.

THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, the Right Honourable the Vice-Chancellor Sir James Lewis Knight Bruce, and the Right Honourable the Vice-Chancellor Sir James Wigram, doth hereby, in pursuance of an act of parliament passed in the fourth year of the reign of her present Majesty, intituled, "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an act passed in the fourth and fifth years of the reign of her present Majesty, intituled, "An Act to amend an Act of the fourth year of the reign of her present Majesty, intituled, 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" order and direct in manner following, that is to say—

I. That in cases where the defendant shall not have put in his answer in due time after appearance, and the plaintiff shall be unable with due diligence to procure a writ of attachment to be executed against such defendant, by reason of his being out of the jurisdiction of the Court, or being concealed, or for any other cause, then such defendant shall, for the purposes of this Order, be

deemed to have absconded to avoid the process of this Court.

That in cases where any defendant, who may be so deemed to have absconded, shall have appeared by his own Clerk in Court, or an appearance having been entered for him under the eighth of the Orders of the 26th day of August, 1841, he shall have afterwards appeared by his own Clerk in Court, the plaintiff may serve upon such Clerk in Court a notice, that on a day in such notice named (being not less than fourteen days after the service of such notice), the Court will be moved, that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought, under the provisions of this Order, to be deemed to have absconded, and the Court being so satisfied, and the answer not being filed, may, if it shall so think fit, order the bill to be taken *pro confesso* against such defendant, either immediately, or at such time or upon such further notice as under the circumstances of the case the Court may think proper.

That in cases where any defendant, who may be so deemed to have absconded, shall have had an appearance entered for him under the eighth of the Orders of the 26th day of August, 1841, and he shall not afterwards have appeared by his own Clerk in Court, the plaintiff may cause to be inserted in the London Gazette a notice, that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the London Gazette), the Court will be moved, that the bill may be taken *pro confesso* against such defendant, and the plaintiff is upon the hearing of such motion to satisfy the Court that such defendant ought, under the provisions of this Order, to be deemed to have absconded, and that such notice of motion has been inserted in the London Gazette at least once in every week from the time of the first insertion thereof, up to the time for which the said notice shall have been given, and the Court being so satisfied, and the answer not

having been filed, may, if it shall so think fit, order the bill to be taken *pro confesso* against such defendant, either immediately, or at such time, or upon such further notice as under the circumstances of the case the Court may think proper.

II. That upon default by an infant defendant in not appearing to or not answering the bill, the Court may, upon motion, order that the Senior Six Clerk not towards the cause may be assigned guardian of such infant defendant, by whom he may appear to and answer, or may answer the bill and defend the suit, upon the Court being satisfied that such defendant is an infant, and if the infant has not appeared, that the subpoena to appear to and answer the bill was duly served, and (whether the infant has appeared or not) that a notice of such motion was (after the expiration of the time for appearing to or answering the bill, and at least six clear days before the hearing of such motion) served upon or left at the dwelling-house of the person, with whom or under whose care such infant defendant was at the time of serving the subpoena, and was also served upon or left at the dwelling-house of the father or guardian (if any) of such infant, where the person with whom or under whose care the infant was at the time of such service shall not be the father or guardian of the infant, unless the Court at the time of hearing such motion shall think fit to dispense with such last-mentioned service.

III. That the plaintiff shall, without special leave of the Court, be at liberty to serve any notice of motion, or other notice, or any petition, personally or at the dwelling-house or office of any defendant, who having been duly served with subpoena to appear to and answer the bill shall not have caused an appearance to be entered by his own Clerk in Court at the time for that purpose limited by the General Orders of the Court.

IV. That the first, second, third, fourth, and fifth of

the Orders of the 26th day of August, 1841, shall not take effect until further order.

V. That the twenty-second of the Orders of the 26th day of August, 1841, shall be suspended until further order.

VI. That the Orders of the 26th day of August, 1841, shall be amended as to numbers X. XI. XII. and XLVII. in manner following ; (that is to say,)

X. That no writ of execution shall hereafter be issued for the purpose of requiring or compelling obedience to any Order or Decree of the High Court of Chancery, but that the party required by any such Order or Decree to do any act, shall, upon being duly served with such Order or Decree, be held bound to do such act in obedience to the Order or Decree.

XI. That if any party, who is by an Order or Decree ordered to pay money or to do any other act in a limited time, shall, after due service of such Order or Decree, refuse or neglect to obey the same according to the exigency thereof, the party prosecuting such Order or Decree shall, at the expiration of the time limited for the performance thereof, be entitled to a writ or writs of attachment against the disobedient party, and in case such party shall be taken or detained in custody under any such writ of attachment without obeying the same Order or Decree, then the party prosecuting the same Order or Decree shall, upon the Sheriff's return that the party has been so taken or detained, be entitled to a commission of sequestration against the estate and effects of the disobedient party, and in case the sheriff shall make the return *non est inventus* to such writ or writs of attachment, the party prosecuting the same Order or Decree shall be entitled, at his option, either to a commission of sequestration in the first instance, or otherwise to an Order for the Serjeant-at-Arms, and to such other process as he hath hitherto been entitled to upon a return *non est inventus* made by the

commissioners named in a commission of rebellion issued for the non-performance of an Order or Decree.

XII. That every Order or Decree requiring any party to do an act thereby ordered shall state the time or the time after service of the Order or Decree, within which the act is to be done, and that upon the copy of the Order or Decree which shall be served upon the party required to obey the same there shall be endorsed a memorandum in the words or to the effect following, viz. :—

“ If you the within-named A. B. neglect to obey this Order (or Decree) by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant-at-Arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same Order (or Decree).”

XLVII. That a creditor who has come in and established his debt before the Master, under a Decree or Order in a suit, shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Master, without taxation, at the time the Master allows the debt of such creditor, unless the Master shall think that such costs ought to be taxed in the regular mode, in which case the same shall be so taxed by the Master, and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

(Signed)

LYNDHURST, C.
LANGDALE, M.R.
LANCELOT SHADWELL, V.C.
J. L. KNIGHT BRUCE, V.C.
JAMES WIGRAM, V.C.

O R D E R

ISSUED BY

THE LORD CHANCELLOR,

26TH OCTOBER, 1842.

—◆—

THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of The Right Honourable Henry Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, and the Right Honourable the Vice Chancellor Sir James Wigram, doth hereby, in pursuance of an Act of Parliament passed in the fifth and sixth years of the reign of her present Majesty, intituled, "An Act for Abolishing certain Offices in the High Court of Chancery in England;" and in pursuance and execution of all other powers, enabling him in that behalf, order and direct in manner following: that is to say,

Clerk of the Inrolments in Chancery.

I. That all acknowledgments, affidavits, or affirmations required for the purpose of inrolling any deed or other document in Chancery may be made, sworn, or affirmed, before the Clerk of Inrolments in Chancery, or before any Clerk of Records and Writs, as occasion may require for the better dispatch of business.

II. That the Clerk of Inrolments in Chancery shall take and receive all such fees and sums of money as have heretofore been lawfully received by the Clerks

of Inrolments and their deputies, or by the Six Clerks, or any of them as Comptrollers of the Hanaper, or as Riding Clerk, and shall pay all such fees and sums of money into the Bank of England, in the name of the Accountant-General, to be placed to the credit of the account, intituled, "The Suitors' Fee Fund Account."

Clerks of Records and Writs.

III. That the Clerks of Records and Writs shall perform all such duties as have heretofore been performed by the Six Clerks, Sworn Clerks, or Waiting Clerks, as officers of the Court, in relation to the several matters hereinafter mentioned; that is to say,

The filing, custody, copying, and amending of all informations, bills, demurrers, pleas, answers, and other pleadings and records.

The entering of appearances, rules, consents, notes and memorandums of service.

The certifying of appearances and proceedings.

The custody of exhibits deposited for inspecting and copying.

The attendance with records and exhibits on the Judges of the Courts, on the Masters in Ordinary, and at assizes or elsewhere.

The inrolment of decrees and orders.

And all other duties heretofore performed by the Six Clerks, Sworn Clerks, or Waiting Clerks, as officers of the Court in relation to suits and matters in equity, and not as attorneys, solicitors or agents of the parties in suits or matters in equity.

IV. That the Clerks of Records and Writs shall forthwith provide a seal in such form and bearing such impression as the Lord Chancellor shall approve of, and that any person desirous of suing out any writ which has heretofore been issued out of the Six Clerks' Office, may prepare the same in the present form, or in such other form as the Lord Chancellor may hereafter direct, and may present such writ for sealing to the Clerk of

Records and Writs, in whose division the cause is, and such writs shall henceforth be open writs, and it shall no longer be necessary for the Lord Chancellor to sign any such writ, and that the Clerk of Records and Writs to whom any such writ shall be presented for sealing, shall thereupon ascertain whether such writ is correct in form, and whether the person presenting the same is according to the course and practice of the Court entitled to sue out the same, and in case it shall appear that such writ is correct in form, and that the person is entitled to sue out the same, such writ shall be forthwith sealed with such seal as aforesaid, and shall, when so sealed, have the same force and validity as such writ now has, when sealed with the great seal.

V. That all exceptions for scandal, impertinence and insufficiency shall be filed with the Clerk of Records and Writs in whose division the cause may be.

VI. That in cases where security for costs has heretofore been directed to be given to a Six Clerk, such security shall be directed to be given to the Clerk of Records and Writs in whose division the cause is.

VII. That pleas, answers, affidavits or affirmations, whereon to ground process of contempt, affidavit or affirmations, required to be annexed to bills, and oaths or affirmations as to the carriage of pleas, answers, examinations or depositions of witnesses, taken before Commissioners in the country, may be sworn, affirmed or attested upon honour, before any Clerk of Records and Writs, or before the Clerk of Inrolment in Chancery, as occasion may require, for the better dispatch of business.

VIII. That any Clerk of Records and Writs, being required to attend with any record or document at any assizes, or at any court or place out of the Court of Chancery, or the offices thereof, shall be entitled to require that the solicitor or party, desiring such his attendance, shall deposit with him a sufficient sum of money to answer his just fees, charges and expenses in respect of such attendance, and to undertake to pay

any further just fees, charges and expenses which may not be fully answered by such deposit.

Taxing Masters.

IX. That the Taxing Masters shall perform all such duties as have heretofore been referred to or performed by the Masters in Ordinary in relation to the taxation of costs; and shall in respect thereof have all such powers and authorities as are now vested in the Masters in Ordinary,

To administer oaths,

To examine witnesses and parties,

To order the production and inspection of books, papers and documents,

To proceed *de die in diem*,

To make separate reports and certificates,

To require that any party be represented by a separate solicitor,

And to direct and adopt all such other proceedings as may now be directed and adopted by the Master in Ordinary, on references for the taxation of costs and taking accounts of what is due in respect of such costs and such other accounts connected therewith as may be directed by the Court.

X. That all references for the taxation of costs shall be made to the Taxing Master in rotation; or if there has been any former taxation of costs in the same cause or matter, then to the Taxing Master before whom such former taxation has taken place, either on a reference from the Court, or upon the request of a Master in Ordinary.

XI. That all bills of costs, which by any existing Order have been referred for taxation to any Master in Ordinary, who shall not have certified the costs due thereon, before the 28th day of October instant, are hereby transferred to the Taxing Masters, and shall respectively be taxed by the Taxing Master in rotation; and that if any bills of costs have been proceeded with before the said 28th day of October instant, the

Taxing Master, by whom the same shall be taxed, shall be at liberty to adopt the whole or such part as he shall think fit, of the proceedings which have taken place before the transfer, and may demand and receive for completing such taxation, such fees as would have been payable in respect thereof, in case such taxation had been continued and completed by the Master in Ordinary, including therein the fees which in such case would have been payable to the Clerks in Court, for the completion of such taxation, or as near thereto as the circumstances of the case will admit.

XII. That in cases where the account of any trustee, executor, administrator, receiver, consignee, or committee, shall consist in part of any bill of costs; and in cases of any proceedings under the 22d or 23d of the Orders of the 21st of December, 1833, or under the 47th of the Orders of the 26th of August, 1841, as amended by the 6th of the Orders of the 11th of April, 1842, and in all other cases where, under any General Order, the Master in Ordinary is at liberty to tax the costs of any proceeding before him in respect of any exemptions, or any creditor's charge, or otherwise, the Master in Ordinary to whom it may be referred to take such account, or before whom any such proceeding may take place, shall be at liberty to request the Taxing Master in rotation, or the Taxing Master to whom any taxation in the same cause or matter may have been previously referred, to assist him in taxing and settling such bill of costs not being the ordinary costs, on passing such account; and that the Taxing Master, on receiving such request, shall proceed to tax such bill, and shall have the same powers and may receive the same fees in respect thereof as if the same had been referred to him by the Court, and shall return the same, with his opinion thereon, to the Master in Ordinary at whose request the same was taxed.

XIII. That if, upon the taxation of any bill of costs, it shall appear to the Taxing Master that for the purpose of duly taxing the same it is necessary to inspect

any books, papers, or proceedings relating to the cause or matter which shall be in the office of any Master in Ordinary, the Taxing Master shall be at liberty to request the Master in Ordinary, having any such book, paper or proceeding in his office, to cause the same to be transmitted to the office of the Taxing Master; and also to request any Master in Ordinary to certify any proceedings in his office, which may be comprised in a bill of costs under taxation; and that in such cases the Master in Ordinary, when and so soon and at and for such times as the due transaction of the business in his own office will permit, shall direct such books, papers, and documents to be transmitted to the office of the Taxing Master, for his use during the taxation, and shall certify the proceedings which have taken place in his office, according to the request of the Taxing Master; and that after the costs in respect of which such request of the Taxing Master was made shall have been certified, the Taxing Master shall cause the same books, papers, and documents which have been so transmitted to his office, if then remaining there, to be returned to the office of the Master in Ordinary by whom they were transmitted, unless it shall appear to the Master in Ordinary, and also to the Taxing Master, that any bill of costs forming part of the papers so transmitted ought to be retained by the taxing Master, in which case the Taxing Master shall take charge of such bill of costs subject to the Order of the Court.

XIV. That when any paper or document shall be transmitted from the office of a Master in Ordinary to the Office of a Taxing Master, an entry of such transmission shall be made in the Book of Proceedings of the Master in Ordinary, and shall be signed by the Taxing Master or the Clerk of the Taxing Master at whose request such paper or document may be transmitted; and that when any such paper or document shall be returned from the office of the Taxing Master to the office of the Master in Ordinary, an entry of such return shall be made in the said book of proceed-

ings and be signed by the Master in Ordinary or his Clerk.

XV. That the Taxing Masters are to be respectively assistant to each other; and that in the discharge of their duties, and for the better dispatch of the business of their respective offices, any Taxing Master may tax or assist in the taxation of a bill of costs which has been referred for taxation, and for ascertaining what is due in respect of such costs to any other Taxing Master, and in such case shall certify accordingly.

Solicitors. Parties acting in Person.

XVI. That the Solicitors of this Court in all cases where the parties sue or defend by Solicitors, and the parties themselves in all cases where they sue or defend in person, shall perform all such duties as have heretofore been performed by the Sworn Clerks and Waiting Clerks, as Attorneys, Solicitors, or Agents of the parties in relation to the several matters hereinafter mentioned, viz.:

The making out of writs.

The serving and being served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, in causes and matters depending in Court.

The signing of elections and agreements to proceed at law or in equity.

The signing of petitions of re-hearing and appeal.

The entering of appearances and consents with the Registrar.

The signing of consents to petitions.

The tender and acceptance of costs.

The joining in Commission and striking of Commissioners' names.

The signing of notices by paupers.

And all other duties heretofore performed by the Sworn Clerks and Waiting Clerks as Attorneys, Solicitors, or Agents of the parties in suits or matters in equity.

XVII. That every Solicitor of a party suing or defending by a Solicitor shall cause to be indorsed or written upon every writ which he shall sue out, and upon every information, bill, demurrer, plea, answer, or other pleading or proceeding, and all exceptions, which he may leave with the Clerks of Records and Writs to be filed, and upon all instructions which he may give to the Clerks of Records and Writs for any appearance or other purpose, his name and place of business, and also (if his place of business shall be more than three miles from the Record and Writ Clerks' Office), another proper place (to be called his address for service), which shall not be more than three miles from the said office, where writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, may be left for him, and where any such Solicitor shall only be the agent of any other Solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal Solicitor.

XVIII. That a party suing or defending by a Solicitor shall not be at liberty to change his Solicitor in any cause or matter without an Order of the Court for that purpose, which may be obtained by motion or petition as of course; and that, until such Order is obtained and served, and notice thereof given to the Clerk of Records and Writs, the former Solicitor shall be considered the Solicitor of the party.

XIX. That where the party sues or defends by a Solicitor, and no address for service of such Solicitor shall have been indorsed or added pursuant to the directions of the 17th Order, all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, not requiring personal service upon the party to be affected thereby, and which have heretofore been served upon the Sworn Clerks or Waiting Clerks, shall, unless the Court shall otherwise direct, be deemed sufficiently served upon the party, if served upon his Solicitor at his place of busi-

ness; but if an address for service of such Solicitor shall have been indorsed or added as aforesaid, then all such writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, shall be deemed sufficiently served upon such party, if left for his Solicitor at such address for service.

XX. That every party suing or defending in person shall cause to be indorsed or written upon every writ which he shall sue out, and upon every information, bill, demurrer, plea, answer, or other pleading, or proceeding, and all exceptions which he may leave with the Clerks of Records and Writs to be filed, and upon all instructions which he may give to the Clerks of Records and Writs for any appearance or other purpose, his name and place of residence, and also (if his place of residence shall be more than three miles from the Record and Writ Clerks' Office), another proper place (to be called his address for service), which shall not be more than three miles from the said office, where writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, may be left for him.

XXI. That where the party sues or defends in person, and no address for service of such party shall have been indorsed or written pursuant to the directions of the 20th Order, and in cases where any party has ceased to have a Solicitor, all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications not requiring personal service upon the party to be affected thereby, and which have heretofore been served upon the Sworn Clerks or Waiting Clerks, shall, unless the Court shall otherwise direct, be deemed to be sufficiently served upon the party if served upon him personally, or at his place of residence; but if an address for service of such party shall have been indorsed or added as aforesaid, then all such writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, shall be deemed suf-

ficiently served upon such party if left for him at such address for service.

XXII. That all writs, notices, orders, warrants, rules, and other documents, proceedings, and other written communications, not requiring personal service upon the party to be affected thereby, and which have heretofore been served on the Clerks in Court or Waiting Clerks, shall be served before eight o'clock in the evening of the day on which the same shall be served, or otherwise the same shall be deemed to have been served on the next following day excluding Sundays.

XXIII. That when any Solicitor or party shall cause an appearance to be entered, or an answer, demurrer, plea, or replication to be filed, he shall on the same day give notice thereof to the Solicitor of the adverse party or to the adverse party himself if he acts in person.

XXIV. That when any exceptions for scandal, impertinence, or insufficiency shall be taken, the Solicitor of the party taking the same, or the party himself if he acts in person, shall leave such exceptions at the Record and Writ Clerks' Office to be filed, and shall on the same day give notice of the filing thereof to the Solicitor for the adverse party, or to the adverse party himself if he acts in person.

XXV. That any Solicitor signing any petition of rehearing or appeal, or any consent to a petition or any notice of motion, or any proceeding or application to be made by a pauper, shall thereby become subject to all liabilities to which the Sworn Clerks have heretofore been subject in respect of such matters.

XXVI. That the Solicitor for the party examining any witness before one of the Examiners is to serve the usual notice in writing, containing the name and description of such witness, upon the Solicitor or Solicitors of the adverse party or parties in the cause.

XXVII. That for the purpose of procuring a guar-

dian *ad litem* to be assigned in Court for an infant defendant, the Solicitor is to attend the Court with the infant and proposed guardian, and request such assignment to be made; and he is to certify to the Court that the proposed guardian has no interest adverse to the interest of the infant, and is a proper person to be assigned guardian.

XXVIII. That where, according to the present practice, it has been usual to assign a Six Clerk Guardian *ad litem* of an infant or person of unsound mind, the Court may appoint one of the Solicitors of the Court to be such guardian, and may direct that the costs to be incurred in the performance of the duties of such office, shall be borne and paid, either by the parties or some one or more of the parties to the suit in which such appointment shall be made, or out of any fund in Court, in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

Clerk of Affidavits.

XXIX. That all affidavits and affirmations to be filed in the Affidavit Office may be sworn or affirmed before the Clerk of Affidavits, who is to receive the proper and usual fees for taking the same, and to pay the amount of the several sums which he may so receive, into the Bank of England, to the account of the Suitors' Fee Fund.

Variation of Orders.

XXX. That the General Order dated the 12th day of October, 1841, for giving effect to certain provisions in an Act passed in the fifth year of the reign of her present Majesty, intituled "An Act to make further Provisions for the Administration of Justice," for transferring to this Court all suits and matters which on the 15th day of October, 1841, should be depending in her

Majesty's Court of Exchequer as a Court of Equity, or under the special authority of any act or acts of parliament, be hereby discharged, and in lieu thereof the following Order be hereby substituted ; viz. That as to all records and documents heretofore belonging to the said Court of Exchequer as aforesaid, and not yet brought into the Court of Chancery, the Clerk of Records and Writs, to whose department such suit would belong, shall, upon request of any of the parties, apply for the records and other documents in such suit not before brought into the Court of Chancery. And it is hereby further ordered, that so far as regards the taxation and allowance of costs in any of the suits or matters to be transferred in pursuance of the said Act, and which shall not, by any Order of this Court, be directed to be regulated in that particular by the late practice of the Court of Exchequer, such costs shall be taxed and allowed in manner following (that is to say), the costs previously to the said 15th day of October, 1841, shall be taxed and allowed according to the practice of the said Court of Exchequer, and the costs from and inclusive of the said 15th day of October shall be taxed and allowed according to the practice of this Court.

XXXI. That the 4th of the Orders of the 3rd April, 1828, shall be interpreted as if the same were amended by substituting the word "file" for the word "deliver." That the 20th of the same Orders shall be interpreted as if the same were amended by substituting the word "Solicitor" for the words "Clerk in Court." That the 43rd of the same Orders shall be interpreted as if the same were amended by substituting the words "Record and Writ Clerks' Office," for the words "Six Clerks' Office." That so much and such parts of the 76th of the same Orders, amended by the Orders of the 23rd November, 1831, as relate to the taxation of costs, shall be interpreted as if the same were further amended, by substituting the words "Taxing Master" for the word

" Master." That the 2nd of the Orders of the 11th April, 1842, shall be interpreted as if the same were amended by substituting the words " one of the Solicitors of this Court" for the words " the senior Six Clerk not towards the cause." And that in like manner where, by reason of the said Act of Parliament made and passed in the 5th and 6th year of her Majesty, intituled, " An Act for abolishing certain Offices of the High Court of Chancery in England," or of any Orders made in pursuance of the said Act, any General Order of the Court shall have become inapplicable to the offices and practice of the Court, as established by and in pursuance of the said Act, such General Order shall be interpreted as if the same were amended, and the directions therein contained were made consistent with the said Act of Parliament and the Orders made in pursuance thereof; and that the Registrars of the Court and the Secretaries of the Master of the Rolls shall, in drawing up all Orders, adapt the language thereof to the alterations made in the practice of the Court by the said Act of Parliament and the Orders made in pursuance thereof.

Fees.

XXXII. That the fees set forth in the 1st schedule hereto shall be received and taken by the Clerk of the Inrolments in Chancery and his Clerks, in addition to the fees and sums of money mentioned in the 2d Order. That the fees set forth in the 2nd schedule hereto, shall be received and taken by the Clerks of Records and Writs and their Clerks. That the fees set forth in the 3rd schedule hereto shall be received and taken by the Taxing Masters and their Clerks. That the fees set forth in the 4th schedule hereto shall be received and taken by the Clerk of Affidavits and his Clerk. That the fees set forth in the 5th schedule hereto shall be received and taken by the Clerks to the Masters in Ordinary, in addition to the other fees received and taken by them. And that the fees set forth in the 6th

schedule hereto shall be received and taken by Solicitors for their own use, in addition to the other fees received and taken by them. And that the Clerks of Records and Writs, and the Taxing Masters respectively, may require any of the said fees payable to them respectively to be paid in advance, or may require a deposit to be paid on account thereof.

XXXIII. That all the fees which are hereby authorized to be received by the Clerk of the Inrolments in Chancery, the Clerks of Records and Writs, the Taxing Masters, the Clerk of the Affidavits, and the Clerks of the Masters in Ordinary, shall be by them severally and respectively paid into the Bank of England, in the name of the Accountant-General, to be placed to the credit of the account entitled the "Suitors' Fee Fund Account."

XXXIV. That the foregoing Orders shall take effect from and after the 28th day of October, 1842.

THE FIRST SCHEDULE

ABOVE REFERRED TO.

Fees to be taken by the Clerk of Inrolments in Chancery and his Clerks.

	£	s.	d.
For the acknowledgment of every Deed for each party ..	0	6	0
For the acknowledgment of every Specification for each party	0	2	6
For every Oath, Affirmation, or Attestation upon honour	0	1	6

THE SECOND SCHEDULE

ABOVE REFERRED TO.

Fees to be taken by the Clerks of Records and Writs and their Clerks.

Sealing every Dedimus to take an Answer	0	10	0
Sealing every Special Dedimus by Order of Court	0	18	0
Sealing Special Injunction	1	10	0
Sealing an Attachment or Distringas for not appearing or answering	0	8	0

	£	s.	d.
Sealing every other Writ	1	0	0
Resealing any Writ on any alteration thereof.....	0	3	0
Filing every Bill or Information	1	0	0
Filing Replication	0	10	0
Entering Appearance for any defendant appearing separately	0	7	0
Entering Appearance if not more than three defendants .	0	7	0
If more than three and not exceeding six defendants....	0	14	0
And in the same proportion for any number of defendants.			
Office Copies of Documents left for inspection as Exhibits, per folio	0	0	4
All other Office Copies, per folio	0	0	10
Filing Plea, Answer, or Demurrer	0	10	0
Entering a Rule	0	8	0
Attending Court of Chancery or Master with Record, per diem	0	14	0
Ditto with Exhibits per diem, exclusive of carriage or portage, when required	0	14	0
Attending with Record or Exhibits in any other Court or place (besides expenses to be retained by the officer to his own use), per diem	2	2	0
Every Consent	0	7	0
Every Certificate	0	4	0
Examining all copies with the Records, per folio	0	0	2
Every Exemplification, per skin, exclusive of parchment and duty	1	14	0
On Inspection of Documents left with the Clerk of Records and Writs, per hour	0	7	0
Amending every Record if amendments under ten folios .	0	14	0
If more than ten folios, for every folio over.....	0	0	6
Amending every Office Copy, if amendments under ten folios.....	0	7	0
If more than ten folios, for every folio over.....	0	0	4
Setting down Cause besides Certificate	1	1	0
Search for Records when in the Record Room, or for any person not being a party in the cause, first year	0	2	0
Each year after	0	1	0
Inspection of same	0	7	0
Filing every Note.....	0	7	0
Entering Memorandum of Service of Copy Bill on every defendant	0	7	0
Every Oath, Affirmation, or Attestation upon honour ..	0	1	6
Every Exhibit to Affidavit, &c.	0	2	6
Inrolling Decree or Order, the same fees as heretofore until further order.			

THE THIRD SCHEDULE

ABOVE REFERRED TO.

Fees to be taken by the Taxing Masters and their Clerks.

	£	s.	d.
For every Warrant	0	3	0
For drawing every Report, per folio, exclusive of the following fee.....	0	1	0
On signing every Report and Certificate.....	1	0	0
Per Centage on amount of every Bill of Costs as taxed .	4	0	0
For Copies of Bills of Costs and other Documents, per folio	0	0	4
For every Oath, Affirmation, or Attestation, upon honour	0	1	6
For every Exhibit.....	0	2	6
For signing the Allowance to every Set of Interrogatories, Account, or other Document	0	5	0
For an Examination Fee on each Witness, exclusive of Oath.....	0	5	0

THE FOURTH SCHEDULE

ABOVE REFERRED TO.

Fees to be taken by the Clerk of Affidavits.

For every Affidavit	0	1	6
For every Exhibit.....	0	2	6

THE FIFTH SCHEDULE

ABOVE REFERRED TO

Fees to be taken by the Clerks of the Masters in Ordinary.

For Copies, in addition to the sum of one penny half-penny now taken and received, the further sum of, per folio	0	0	2½
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THE SIXTH SCHEDULE

ABOVE REFERRED TO.

Fees to be taken and received by Solicitors.

For preparing every Writ without Order	0	6	8
Ditto, every Writ under Order, except Special Injunction	0	13	4

ORDERS IN CHANCERY.

25

	£	s.	d.
Ditto, Special Injunction, including Ingrossment and			
Docket, per folio.....	0	1	4
Parchment as paid.....	0	0	0

LYNDHURST, C.
 LANGDALE, M. R.
 LANCELOT SHADWELL, V. C. E.
 JAMES WIGGAM, V. C.

ORDERS IN LUNACY,

MADE

27TH OCTOBER, 1842.

I, JOHN SINGLETON BARON LYNTHURST, Lord High Chancellor of Great Britain, intrusted by virtue of Her Majesty's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do, in pursuance of an act of parliament passed in the sixth year of the reign of her present majesty, intituled "An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs *de lunatico inquirendo*," and for the purpose of making immediate provision for carrying the same into effect, hereby order and direct in manner following; that is to say—

I. That from and after the first day of Michaelmas Term next, the Office of Clerk of the Custodies of Idiots and Lunatics do cease and determine.

II. That all the inquiries and matters connected with the persons and estates of Lunatics heretofore usually referred to the Masters in Ordinary of the High Court of Chancery, (*except* inquiries under or by virtue of an act made and passed in the first year of the reign of his majesty King William the Fourth, intituled "An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases," and also *except* where the Lord Chancellor shall from time to time otherwise specially direct,) be here-

after referred to the Commissioners in Lunacy for the time being.

III. That all inquiries in lunacy now pending before any of the said Masters, (*except* any inquiries under or by virtue of the said act of parliament in the last Order mentioned, and *except* where otherwise hereafter specially directed,) be transferred to the Commissioners in Lunacy.

IV. That all deeds, wills, securities, papers and documents, in any lunacy, now left or deposited in the offices of the said Masters respectively, be delivered to the Commissioners in Lunacy, or to some person by them authorized to receive the same.

V. That until further order, the Clerks to the Commissioners take and receive, for business done in the Commissioners' Office, the like fees to those for the time being receivable by the Clerks to the said Masters for the like business, such fees to be accounted for as hereinafter mentioned.

VI. That until further order, all acts, deeds, matters and things heretofore accustomed to be done in the execution of the office of Clerk of the Custodies, as to the several matters following, be done by the Commissioners in Lunacy; that is to say—

1. Bonds and recognizances of committees and their sureties, and the vacating and delivering up the same;
2. The bill for the grant of the custody, and for the revocation thereof;
3. Summoning committees and sureties to account;
4. Filing and copying committees' accounts, and certifying the same.

VII. That until further order, the Clerks of the Commissioners take and receive, for the business so done under the foregoing Order, the like fees to those heretofore received in the office of Clerk of the Cus-

todies for the like business, such fees to be accounted for as hereinafter mentioned.

VIII. That until further order, all other acts, deeds, matters and things heretofore accustomed to be done in the execution of the office of Clerk of the Custodies, be (so far as according to the practice for the time being in lunacy the same shall be necessary to be performed) done by the Secretary of Lunatics; and the Secretary of Lunatics is to take and receive, for the business so done, the like fees to those heretofore received in the office of Clerk of the Custodies for the like business, such fees to be accounted for as hereinafter mentioned.

IX. That the matter of each lunacy be, for the purpose of the inquiries hereby authorized, considered as referred to the Commissioners in Lunacy from the date of the Inquisition.

X. That where any person has been or may be found lunatic under any commission, the Commissioner do, from time to time, and without any Special Order in such matter, inquire and report who is or are the heir or heirs-at-law and next of kin of the lunatic, and the person or persons who would be entitled to his estate or to shares thereof under the statutes for the distribution of intestates' estates, in case he were, at the date of such inquiry, dead intestate, to whom due notice of attending the Commissioner is to be given; and also inquire and report what is the situation of the lunatic and the nature of the lunacy, and who is or are the most fit and proper person or persons to be appointed the Committee or Committees of the person and estate of the lunatic, and of what the fortune of the lunatic did, at the time from which he shall have been found lunatic, consist, and of what it consists at the time of such inquiry, and what is the amount of income arising therefrom, and in what manner, and at what expense, and by whom and where the lunatic has been maintained, and whether anything, and what is due, and

to whom, in respect of such past maintenance, and to whom, and out of what fund the same ought to be paid, and what is fit and proper to be allowed for the maintenance and support of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence.

XI. That the Commissioner be at liberty immediately after inquisition, and without any Special Order in the matter, to make inquiry, and to report, whenever it shall seem necessary, upon the provisional care and management of the lunatic, and his property, and as to maintenance, until committees or a committee be appointed.

XII. That the Commissioner be at liberty, by certificate under his hand, and without any Special Order for that purpose, to enlarge from time to time the period within which any person approved of as committee of the estate of any lunatic ought to complete his security.

XIII. That the Commissioner be at liberty, without Special Order, to receive any proposal or conduct any inquiry as to the managing, setting or letting the estate or otherwise respecting the person or property of any lunatic, and may report thereon as he shall see fit ; but such report shall be submitted for confirmation, as is now done with respect to such reports when made upon special reference.

XIV. That it shall not be necessary for the committee, or the legal personal representatives of the committee, to obtain a Special Order in the matter for the taking and passing from time to time his or their accounts, but such committee or his legal personal representatives, as the case may be, do from time to time, without any Special Order in the lunacy for that purpose, attend before the Commissioner, and have an account of his or their receipts and payments for and

100

100

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